

No. 15714

SEE ALSO Vol.

United States
Court of Appeals
for the Ninth Circuit

3080

TALON, INC.,

Appellant,

vs.

UNION SLIDE FASTENER, INC.,

Appellee.

UNION SLIDE FASTENER, INC.,

Appellant,

vs.

TALON, INC.,

Appellee.

Transcript of Record

In Five Volumes

VOLUME I.

(Pages 1 to 400, inclusive)

Appeal from the United States District Court for the
Southern District of California,

FILED
Central Division

MAR 12 1958

PAUL P. O'BRIEN, CLERK

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NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

LYON & LYON,
CHARLES G. LYON,
811 West 7th Street,
Los Angeles 17, California.

For Appellee:

ALLAN D. MOCKABEE,
108 West 6th Street,
Los Angeles 14, California. [1]*

* Page numbers appearing at bottom of page of Original Transcript of Record.



In the United States District Court, Southern
District of California, Central Division

Civil Action No. 10450-W

TALON, INC., Plaintiff,

vs.

UNION SLIDE FASTENER, INC., Defendant.

COMPLAINT

[U. S. Patent Nos. 1,903,659—2,026,413—2,078,016—2,078,017—2,169,176—2,437,793]

Plaintiff, Talon, Inc., for its complaint against defendant, alleges as follows:

I.

Plaintiff, Talon, Inc., is a corporation duly organized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania, having its principal place of business in the City of Meadville, County of Crawford, and Commonwealth of Pennsylvania. On or about October 9, 1937, plaintiff changed its name from Hookless Fastener Company to Talon, Inc. as approved and recorded with the Secretary of State of the Commonwealth [2] of Pennsylvania and as recorded in the United States Patent Office on December 2, 1937, Liber A-173, page 575.

II.

Defendant, Union Slide Fastener, Inc., is a corporation duly organized and existing under and by

virtue of the laws of the State of California and it has a place of business at 10731 Chandler Boulevard, North Hollywood, California.

III.

This is a Civil Action for infringement of Letters Patent. Jurisdiction is based upon the Patent Laws of the United States and also upon diversity of citizenship of the parties, the matter in controversy exceeding the sum of Three Thousand Dollars (\$3,000) exclusive of interest and costs.

IV.

That on or about April 11, 1933, United States Letters Patent No. 1,903,659 was duly and legally issued to plaintiff, then known as "Hookless Fastener Company," for an invention in "Machine and Method for Applying Fastener Elements" and plaintiff has been and still is the owner of said Letters Patent since prior to the acts of infringement herein complained of.

V.

That on or about December 31, 1935, United States Letters Patent No. 2,026,413 was duly and legally issued to plaintiff, then known as "Hookless Fastener Company", for an invention in "Method and Machine for Making Flexible Closures" and plaintiff has been and still is the owner of said Letters Patent since prior to the acts of infringement herein complained of.

VI.

That on or about April 20, 1937, United States Letters Patent No. 2,078,016 was duly and legally

issued to plaintiff, then known as "Hookless Fastener Company", for an invention in [3] "Machine for Forming Interlocking Members for Separable Fasteners" and plaintiff has been and still is the owner of said Letters Patent since prior to the acts of infringement herein complained of.

VII.

That on or about April 20, 1937, United States Letters Patent No. 2,078,017 was duly and legally issued to plaintiff, then known as "Hookless Fastener Company" for an invention in "Method for Making Separable Fasteners" and plaintiff has been and still is the owner of said Letters Patent since prior to the acts of infringement herein complained of.

VIII.

That on or about August 8, 1939, United States Letters Patent No. 2,169,176 was duly and legally issued to plaintiff, for an invention in "Method of Making Separable Fasteners" and plaintiff has been and still is the owner of said Letters Patent since prior to the acts of infringement herein complained of.

IX.

That on or about March 16, 1948, United States Letters Patent No. 2,437,793 was duly and legally issued to David Silberman for an invention in "Zipper Manufacturing Machinery", and that plaintiff is the owner of said Letters Patent by reason of assignment of said Letters Patent dated April

19, 1949, recorded in the United States Patent Office on April 23, 1949, Liber X-219, page 380.

X.

Plaintiff has given written notice to defendant of its infringement.

XI.

Defendant, Union Slide Fastener, Inc., has for a long time past and still is infringing each of the aforesaid Letters Patent by making or causing to be made, by using, and by selling [4] machines embodying or operating in accordance with an invention described and claimed in each of the aforesaid Letters Patent, within the jurisdiction of this court and elsewhere, and defendant, Union Slide Fastener, Inc., will continue to infringe said Letters Patent unless enjoined by this court.

Wherefore, plaintiff demands:

(a) A preliminary and final injunction against further infringement by defendant, or those controlled by said defendant;

(b) An accounting for damages and profits;

(c) That defendant account to plaintiff for general damages as due compensation for the unlicensed making, using and selling of machines and devices in infringement of the aforesaid Letters Patent;

(d) That said general damages be not less than a reasonable royalty;

(e) That an assessment be made against defendant for such costs, and interest as may be fixed by the court;

(f) That plaintiff be awarded reasonable attorneys' fee;

(g) For such other and further relief as the court may deem reasonable and just.

LYON & LYON,
/s/ CHARLES G. LYON
/s/ WM. C. McCOY,
/s/ RALPH E. MEECH,

[Endorsed]: Filed Oct. 17, 1949.

[Title of District Court and Cause.]

INTERROGATORIES PROPOUNDED TO DEFENDANT UNDER RULE 33 RCP AND ANSWERS THERETO

Comes now the plaintiff and propounds the following interrogatories pursuant to Rule 33 of the Federal Rules of Civil Procedure, to be answered by the defendant, by an officer or officers thereof, competent to testify in its behalf under oath:

1.

Is defendant operating at 1829 Blake Avenue, within the city of Los Angeles, California, machines for the production of stringers, i.e., lengths of tape having affixed thereto a plurality of zipper elements?

To Lyon & Lyon, Esq., attorneys for plaintiff, 811 West Seventh Street, Los Angeles 17, California:

The answer of the above named defendant, Union Slide Fastener, Inc. to the Interrogatories for its examination, served on it by the above named plaintiff, is as follows:

Yes.

2.

If the answer to Interrogatory 1 is in the affirmative, when were such machines first used by defendant?

June, 1947.

3.

If the answer to Interrogatory 1 is in the affirmative, attach to the answers to these interrogatories full and complete [6] drawings illustrating said machines and each separate part of element thereof.

We have no original drawings or blueprints of the machines. Various parts have been added or changed to affect better production, so that these machines are not now constructed as of date of filing of complaint.

4.

If the answer to Interrogatory 1 is in the affirmative, how many such machines is defendant operating and how long has each of these machines been in operation?

It is operating four machines. The first machines started in operation in October, 1947; the second machine started operation on or about December, 1947; the third machine started operation on or about May, 1948, and the fourth machine started operation on or about August, 1949.

5.

If the answer to Interrogatory 4 is more than one, do any of these machines differ from any of the others?

No.

6.

If the answer to Interrogatory 5 is in the affirmative, attach to the answers to these interrogatories full and complete drawings illustrating such differences in each of them.

No answer required.

7.

Is the defense of this suit being controlled by any person or corporation or group of persons or corporations other than defendant?

No.

8.

If the answer to Interrogatory 7 is in the affirmative, state who such person or persons, corporation or corporations are.

No answer required.

9.

If the answer to Interrogatory 7 is in the negative, are any persons or corporations other than defendant contributing to the defense of this suit either financially or otherwise?

No.

10.

If the answer to Interrogatory 9 is in the affirmative, state who such person or persons, corporation or corporations are.

No answer required.

11.

Identify by the name of the inventor the date of issue and number each and every letters patent to be relied upon by defendant as evidencing prior patents by others as alleged in paragraph XI(c) of defendant's answer. [7]

As per Schedule "A" annexed hereto.

12.

Give the name and residence of each of the persons alleged by defendant who have invented, used and known the invention of Letters Patent in suit No. 2,437,793 prior to the invention or discovery thereof by David Silberman, as set forth in paragraph XI(d) of defendant's answer, together with the locations where such uses took place in full compliance with RSUS 4920, 35 USC 69.

The first names of parties not now available. Last names are Flourette, Delaguella, Haverkorst and others. Their present addresses are not known yet to defendant. To the best of defendant's information and belief the uses referred to took place in and about New York City.

13.

Identify from the file wrapper of Letters Patent in suit No. 2,437,793 the material therein, giving page and line number which defendant will rely upon as supporting the allegation of paragraph XI(f) that the applicant for Letters Patent No. 2,437,793 in suit limited and defined his claims.

13. As per Schedule "B" annexed hereto.

14.

Identify each patent, if any, by the name of the inventor, the number of patent and the date of issue of patent which defendant will rely upon at the trial to substantiate its assertions in paragraphs XI(e) and XI(g) concerning the state of the art at or before the invention of Letters Patent in suit No. 2,437,793, and identify each other publication and prior use, if any, to be relied upon for that purpose.

Answer the same as Schedule "A" aforesaid.

15.

Identify by page and line number in the specification and by reference to the drawings of the Letters Patent in suit No. 2,437,793 the portions defendant will rely upon to support its allegation that the specification and claims are not in such full, clear, concise and exact terms as to enable any person skilled in the art or science to which it pertains or to which it is most nearly connected to make, compound or use the same or to determine what is the invention claimed by said letters patent.

Answer same as Schedule "C" annexed hereto.

In the following interrogatories where an interrogatory is separated into subparagraphs, please answer each paragraph separately and fully. [8]

16.

Has the defendant at any time since October 17,

1943 manufactured or used a machine for the production of zipper stringers, in which:

a. a wire or rod is fed intermittently to a punch and die to form recesses on one side and projections on the other side of the wire;

b. jaw members are formed in the end of the wire or rod;

c. jaws are thereafter closed on the tape; and

d. the element is thereafter severed from the wire or rod?

A. Yes.

B. Yes.

C. Yes.

D. No.

17.

If the answer to Interrogatory 16, either as to subparagraph a, b, c or d, is in the negative specify the manner in which defendant's machines fail to correspond with this description.

The severing does not take place after the jaws of the scoops are closed on the tape.

18.

If the answers to Interrogatory 16a, b and c are each in the affirmative and the answer to 16d is in the negative, do defendant's machines sever the elements from the wire or rod prior to closing the jaws of the elements on the tape?

No.

19.

If the answers to Interrogatory 16a, b and c are in the affirmative and the answer to 16d is in the

negative, do defendant's machines simultaneously sever the elements from the wire or rod and close the jaws of the elements in the tape?

Yes.

20.

Has the defendant at any time since October 17, 1943 manufactured or used a machine for the production of zipper stringers, in which:

a. the jaws of each zipper element are formed by removing from the wire the intervening material? [9]

Yes.

21.

In defendant's machines is it not a fact that the severing of a zipper element from the wire simultaneously removes material from the wire which material, prior to being removed, occupied the space intervening between the jaws of the next succeeding element?

There is no removal of any of the wire between the scoops in defendant's process.

22.

In defendant's machines is it not a fact that the jaws of each element are advanced into a position straddling the tape while still integral with the wire?

Yes.

23.

Has defendant at any time since October 17, 1943 manufactured or used a machine for the production of zipper stringers in which there is included:

a. means for feeding a tape into a predetermined position;

b. means for feeding a metallic member toward that position; and

c. means immediately at that position for performing all operations upon the fed member to form slide fastener elements from the fed member and to attach the elements to the tape directly from the fed member?

A. Yes.

B. No.

C. No.

24.

If the answer to any portion of Interrogatory 23 is in the negative specify the manner in which defendant's machines fail to correspond with this description.

Defendant does not perform all operations upon the fed member at the last position when said member is attached to the tape directly.

25.

Do defendant's machines include forming means for zipper elements which include:

a. a base;

b. a shaft carried by the base; [10]

c. a pair of eccentrics of small eccentricity spaced apart on the shaft;

d. a ram;

e. a pair of connecting rods carried by the eccentrics, the connecting rods extending substantially vertically from the eccentrics to each side of the

ram and having slight lateral movement during reciprocation by the eccentrics; and

f. cooperating means carried wholly by the ram and the base for forming and cutting elements from the member and attaching the elements to the tape?

A. Yes.

B. Yes.

C. Yes.

D. Yes.

E. Yes.

F. Yes.

26.

If the answer to any portion of Interrogatory 25 is in the negative specify the manner in which defendant's machines fail to correspond with this description.

No answer required.

27.

Do defendant's machines include a connecting rod extending from one of the eccentrics for driving the feeding means, which connecting rod extends substantially vertically from its eccentric?

No.

28.

If the answer to Interrogatory 27 is in the negative specify the manner in which defendant's machines fail to correspond with this description.

Defendant does not operate a metal feed from either of the eccentrics specified in interrogatory 25.

29.

Has the defendant at any time since October 17,

1943 manufactured or used a machine for the production of zipper stringers in which there is included:

- a. a base;
- b. a ram reciprocal towards and away from the base;
- c. means for feeding a substantially uniform metallic strip between the reciprocal ram and the base; [11]
- d. means for feeding a tape past the end of the feed strip;
- e. the ram and the base having complimentary means for forming and separating a slide fastener element from the strip;
- f. a pair of jaws on the base, the jaws being disposed on either side of the tape and being slidable towards each other for engaging and closing the element on the edge of the tape; and
- g. cams carried by the ram, the cams and the jaws having cam faces brought into direct engagement on downward movement of the ram to drive the jaws into engagement with the element to close it upon the edge of the tape?

- A. Yes.
- B. Yes.
- C. Yes.
- D. Yes.
- E. Yes.
- F. Yes.
- G. Yes.

is in the negative specify the manner in which defendant's machines fail to correspond with this description.

No answer required.

31.

Has the defendant at any time since October 17, 1943 manufactured or used a machine for the production of zipper stringers in which there is included:

- a. a ram;
- b. a base;
- c. means for effecting relative movement of the ram and the base;
- d. means removably carried by the ram and the base for forming slide fastener elements from stock fed past the ram and for attaching the elements to tape fed past the ram; and
- e. forming means, the ram and the base being formed to permit the forming means to be removed from the [12] association by movement transversely of the direction of said relative movement?

A. Yes.

B. Yes.

C. Yes.

D. Yes.

E. No. The question is slightly ambiguous.

32.

If the answer to any portion of Interrogatory 31 is in the negative specify the manner in which defendant's machines fail to correspond with this description.

No answer required.

33.

Produce and attach to the answer to these interrogatories a typical die block with assembled die and a typical punch as utilized in defendant's machines.

Defendant does not now possess any die block similar to the one used at the time of filing complaint.

34.

Has the defendant at any time since October 17, 1943 manufactured or used a machine for the production of zipper stringers which included:

- a. a ram;
 - b. a base;
 - c. means for effecting relative movement of the ram and the base;
 - d. the ram having a recessed opening transversely of the direction of said relative movement and means removably positioned in the recess for forming slide fastener elements from stock fed past the ram; and
 - e. the forming means and the recess being formed to permit the assembly and separation of the forming means and the recess by movement of the forming means into and out of the recess transversely of the direction of said relative movement?
- A. Yes.
 - B. Yes.
 - C. Yes.
 - D. Defendant does not feed stock past ram.
 - E. No. The question is slightly ambiguous.

35.

If the answer to any portion of Interrogatory 34 is in the negative specify the manner in which defendant's machines fail to correspond with this description. [13]

No answer required.

36.

When did defendant and/or its officer, Mr. Lipson, first learn of the existence of Letters Patent No. 2,437,793?

In June, 1948, while Mr. Lipson was in Europe and confirmed by Mr. David Silberman at Los Angeles in August, 1948.

Dated: November 17, 1950.

TALON, INC.,
/s/ By CHARLES G. LYON,
Attorney for Plaintiff. [14]

[Answers dated May 9, 1951. Signature: Union Slide Fastener, Inc., by Philip Lipson, President, Defendant.]

Acknowledgment of Service Attached. [15]

SCHEDULE "A"

Answer to Interrogatory 11

The following are the letters patent to be relied upon by defendant as evidencing prior patents by others as alleged in paragraph XI (c) of defendant's answer:

Inventor: Bartlett—Date of Issue: 1871—Patent:
119,555.

Spooner—December 4, 1883—289,577.

Cosper—July 22, 1890—432,726.

Boyer—June 21, 1892—477,402.

Pope—July 31, 1894—523,730.

Bosley—February 18, 1896—554,907.

Palmer et al.—September 7, 1897—589,570.

Sebastian—October 10, 1899—634,859.

Bartel—May 29, 1900—650,578.

Stimpson—July 1, 1902—703,747.

Havener—February 13, 1912—1,016,940.

Fulk—May 2, 1916—1,181,130.

Axccl—September 19, 1916—1,198,512.

Sundback—March 20, 1917—1,219,881.

Sundback—August 14, 1917—1,236,783.

Sundback—August 14, 1917—1,236,784.

Sundback—October 16, 1917—1,243,458.

Howell—January 14, 1919—1,291,524.

Bowers—November 25, 1919—1,322,525.

Sundback—February 24, 1920—1,331,884.

Sawyer—May 24, 1921—1,379,420.

House et al.—March 21, 1922—1,410,182.

Sundback—November 7, 1922—1,434,857.

Sundback—September 4, 1923—1,467,015.

Smith—April 14, 1925—1,533,352.

Schulest—November 3, 1925—1,560,328.

Glass—April 13, 1926—1,580,132. [37]

Barrundia—May 25, 1926—1,586,436.

Lorenz—October 19, 1926—1,604,056.

Meltzer—January 18, 1927—1,614,750.

Greenburg—May 17, 1927—1,629,268.

Draher et al.—September 13, 1927—1,642,411.
Keall—October 18, 1927—1,645,648.
Sundback—December 20, 1927—1,653,320.
Hommel—February 14, 1928—1,659,266.
Murphy—April 3, 1928—1,664,480.
Long—May 1, 1928—1,668,161.
Perrault—August 7, 1928—1,679,626.
Gallet—April 2, 1929—1,707,758.
Peirce—July 2, 1929—1,719,446.
Johnson—October 15, 1929—1,731,667.
Aronson—December 30, 1930—1,786,978.
Glass—April 7, 1931—1,799,615.
Johnson—June 2, 1931—1,808,041.
Sundback—June 16, 1931—1,810,377.
Poux—August 4, 1931—1,817,837.
Lamb—August 11, 1931—1,817,990.
Prentice—September 8, 1931—1,822,173.
Holmes—April 12, 1932—1,853,048.
Nodine—December 6, 1932—1,890,335.
Rutherford—December 13, 1932—1,890,471.
Poux—March 14, 1933—1,901,189.
Smith—April 11, 1933—1,903,659.
Prentice—November 21, 1933—1,935,727.
Leighton—December 12, 1933—1,938,915.
Sundback—February 20, 1934—1,947,956.
Glass—May 15, 1934—1,958,537.
Binns—December 31, 1935—2,026,413.
Gerlach—July 14, 1936—2,047,368. [38]
Poux—April 20, 1937—2,078,017.
Legat—October 26, 1937—2,097,099.
Prentice—May 10, 1938—2,116,712.
Legat—May 10, 1938—2,116,726.

Arentzen—February 28, 1939—2,148,673.
Kiessling—January 2, 1940—2,185,769.
Poux—August 8, 1939—2,169,176.
Wintritz—May 14, 1940—2,201,068.
Munschauer—July 29, 1941—2,251,153.
Carlson—September 9, 1941—2,255,377.
Novick et al.—October 14, 1941—2,259,320.
Behrens—December 30, 1941—2,267,783.
Miller—March 10, 1942—2,275,454.
Glassner—May 26, 1942—2,284,569.
Taberlet—August 25, 1942—2,294,253.
Wintritz—October 10, 1942—2,299,606.
Ulrich—November 17, 1942—2,302,075.
Ulrich—February 9, 1943—2,310,660.
Glasner—December 14, 1943—2,336,662.
Lewis—April 18, 1944—2,346,925.
Hermani—October 31, 1944—2,361,687.
Ulrich—February 27, 1945—2,370,380.
Jackson—October 16, 1945—2,387,027.
Poux—April 20, 1937—2,078,016.

and references cited in file history:

Hundhausen (Austria)—40,781.
Deiseldorff (Swiss)—December 31, 1933—166,227.
Gastrich (Ger.)—1912—254,038.
Winterhalter (Br.)—October 27, 1932—382,442.
Boyer (Great Britain)—May 17, 1940—521,328.
Kamper (Ger.)—1933—585,735. [39]
Wittenberg (Ger.)—December 2, 1933—589,070.
(French Patent)—October 30, 1928—653,037.
Amiet (French)—February 2, 1931—703,186.

SCHEDULE "B"

Answer to Interrogatory 13

Rewriting of Claims 15, 16 and 17 into Claims 63, 64 and 65, which became Claims 29 to 31 of the issued patent, by Amendment dated July 18, 1947, Paper No. 21 File History.

Cancellation of Claims 2, 46, 47, 48 and 49, by Amendment dated October 10, 1947, Paper No. 23 File History.

Cancellation of Claims 4 to 10 inclusive and 26 to 35 inclusive by Amendment dated November 20, 1947, Paper No. 25, File History.

Cancellation of Claims 71, 72, 78 and 79 by Amendment dated December 22, 1947, Paper No. 27, File History.

Amendment of Claims 73 and 74, as noted on patented claims 37 and 38, pursuant to Amendment dated November 20, 1947, Paper No. 25, File History. [41]

SCHEDULE "C"

Answer to Interrogatory 15

Page 1, Column 1, Line 42, Lines 48 and 49, Line 54.

Page 2, Column 2, Line 1, Line 5, Lines 12 and 13, Line 15.

Page 2, Column 3, Lines 24 to 41 inclusive.

Page 4, Column 8, Lines 43 to 47 inclusive.

Page 5, Column 10, Lines 52 to 68 inclusive.

Page 6, Column 11, Lines 8 to 11 inclusive.

Page 7, Column 14, Lines 16 and 17, Lines 23 and 24, Lines 43 to 45 inclusive.

Page 8, Column 15, Lines 11 to 14 inclusive; Column 16, Lines 10 to 18 inclusive. [42]

Acknowledgment of Service Attached. [43]

[Endorsed]: Interrogatories Filed Nov. 21, 1950.
Answers Filed May 10, 1951.

[Title of District Court and Cause.]

AMENDED ANSWER AND COUNTER CLAIM

Comes now the Defendant, Union Slide Fastener, Inc., and with regard to the Complaint filed herein alleges and denies as follows:

I.

Answering Paragraph I, Defendant is without knowledge as to any of the allegations therein set forth, and therefore denies the same and leaves the Plaintiff to its proof.

II.

Answering Paragraph II, Defendant admits it is a corporation organized under the laws of the State of California.

III.

Answering Paragraph III, Defendant admits that the jurisdiction is based upon the Patent Laws of the United States, but denies each and every other allegation thereof. [16]

IV.

Answering Paragraph IV, Defendant admits that United States Letters Patent No. 1,903,659 were

issued to one Hookless Fastener Company, but defendant is without knowledge as to any of the other allegations of this Paragraph and therefore denies the same and leaves the Plaintiff to its proof.

V.

Answering Paragraph V, Defendant admits that the United States Letters Patent No. 2,026,413, were issued to one Hookless Fastener Company, but defendant is without knowledge as to any of the other allegations of this Paragraph and therefore denies the same and leaves the Plaintiff to its proof.

VI.

Answering Paragraph VI, Defendant admits that the United States Letters Patent No. 2,078,016, were issued to one Hookless Fastener Company, but Defendant is without knowledge as to any of the other allegations of this Paragraph and therefore denies the same and leaves the Plaintiff to its proof.

VII.

Answering Paragraph VII, Defendant admits that the United States Letters Patent No. 2,078,017, were issued to one Hookless Fastener Company, but defendant is without knowledge as to any of the other allegations of this Paragraph and therefore denies the same and leaves the Plaintiff to its proof.

VIII.

Answering Paragraph VIII, Defendant admits that the United States Letters Patent No. 2,169,-

176, were issued to Plaintiff, but Defendant is without knowledge as to any of the other allegations of this Paragraph and therefore denies the same and leaves the Plaintiff to its proof.

IX.

Answering Paragraph IX, Defendant admits that the United [17] States Letters Patent No. 2,437,793, were issued to one David Silberman, but Defendant is without knowledge as to any of the other allegations of this Paragraph and therefore denies the same and leaves the Plaintiff to its proof.

X.

Denies the allegations contained in Paragraph X.

XI.

Answering Paragraph XI, Defendant denies each and every allegation thereof.

Further Answering Said Complaint Herein And For Separate, Alternate And Further Defenses:

(a) Defendant alleges that the pretended Letters Patent Nos. 2,437,793, 2,169,176, 2,078,017, 2,078,016, 2,026,413 and 1,903,659 were not granted by the Commissioner of Patents within the authority granted to him under due power of law. That said pretended Letters Patent No. 2,437,793, were irregularly granted without proper due consideration of the application for said pretended Letters Patent.

(b) That defendant has not infringed any of said Letters Patent or the claims thereof.

(c) That the patentees named in each of said Letters Patent, and particularly David Silberman, the patentee named in pretended Letters Patent No. 2,437,793, are not the original or first inventors of that which is alleged to be obtained in each of said pretended Letters Patent, or any material or substantial part thereof, but on the contrary, prior to the respective dates of the alleged invention or discovery disclosed or claimed in each of said Letters Patent, the alleged invention or discovery described and claimed in said pretended Letters Patent, and all material and substantial parts thereof, had been described or published or contained in each of the following Letters Patent, or the applications therefor, and have been published, described and contained in other printed [18] publications. The numbers and patentees of such Letters Patent, and the dates thereof, and the publications and dates and publishers thereof are not all available, and defendant prays leave to add the same by amendment to this Answer or otherwise.

(d) Defendant further alleges upon information and belief that prior to any supposed information or discovery by the patentees named in each of said Letters Patent, that which is alleged to be obtained by said pretended Letters Patent, and particularly that which is described and claimed therein, and the material and substantial parts thereof in the United States, had been invented,

sold and used by, or known to each of the persons whose names, places of residences and inventions are as follows:

1. Each and every patentee mentioned in the preceding paragraph resides at the places indicated in the respective patents and the places stated as the places of residences of the patentees.

2. And others whose names and addresses this Defendant has not yet learned and for which this Defendant is diligently searching and prays leave to add to this Answer.

(e) That in view of the state of the art at and before the respective alleged invention or inventions of each of the said pretended Letters Patent, or attempted to be defined in claims or any claims of each of said pretended Letters Patent, said claims or any of them cannot now be so interpreted as to bring within their purview as an infringement thereof any device manufactured, used or sold by this Defendant.

(f) That while each of the alleged applications for each of said pretended Letters Patent were pending in the United States Patent Office, the applicant therefor so limited and confined the claims of each of said applications under the requirements of the Commissioner of Patents, that Plaintiff cannot now seek for or obtain a construction for any claim of each of said pretended Letters Patent sufficiently broad to cover any device manufactured, used, [19] or sold by the Defendant.

(g) That Defendant further alleges that the alleged inventions of each of said pretended Letters Patent, in view of the state of the art as it existed at the date of each of the alleged inventions, do not involve invention of any patentable novelty but consist of the mere adaptation of well known methods, devices and compositions of matter for the required uses involving merely the skill expected of one in the art to which each of said pretended Letters Patent pertain.

(h) That Defendant further alleges that the description of each of the alleged inventions and the specifications and claims of each of the pretended Letters Patent are not in such full, clear, concise and exact terms as to enable any person skilled in the art or science to which each pertains or to which each is most clearly connected to make compound or use of the same, or to determine what invention is claimed by each of said Letters Patent.

(i) That as patent owner or licensor of a large number of U. S. Letters Patent, plaintiff has sought to intimidate, harass and discourage competitors, to block and impede the development by others of the manufacture of slide fasteners and the constituent parts of machines and methods used in making slide fasteners, and has imposed upon competitors licenses and agreements requiring that the licensee compel such licensee's customers to take licenses under the same licensed patents directly from the plaintiff in such manner that the plaintiff shall collect at least two royalties, upon the same licensed patent and shall also control competition.

(j) That the said David Silberman, the patentee named in U. S. Letters Patent 2,437,793, here in suit, visited Los Angeles in August of 1948, and there met certain representatives of defendant. That said Silberman admitted to such representatives that his said United States Letters Patent of said Silberman [20] would not hold water in court; but stated that he had extended rights or licenses under corresponding foreign patents of Great Britain and Europe to Imperial Chemical Industries, one of the largest chemical manufacturers in the world, which he was anxious to protect. Silberman thereupon agreed with defendant, for a due and valid consideration, to refrain from asserting any rights against defendant under his said United States Patent; and since that date, defendant has duly performed the terms and conditions of said agreement on Defendant's part. That, by reason of the foregoing facts, plaintiff is estopped to claim any infringement by Defendant of the said Silberman Patent, No. 2,437,793.

(k) That, continuously since 1946, Defendant and its predecessor has been and now is engaged in the manufacturing and selling of slide fasteners, which have been shipped into many states of the United States. That in April 1948, before Plaintiff had acquired title to the Silberman patent in suit, Grosvener S. McKee, Vice-President of Plaintiff, upon his own request, was granted permission by defendant to go through the plant of defendant by executives of defendant, and that, after carefully inspecting the chain production machines of

defendant, Mr. McKee stated to defendant's representative, in substance, that the machines and the methods employed therein did not infringe any Letters Patent then owned by plaintiff and that Plaintiff would not cause the defendant any trouble with respect thereto. That thereafter, plaintiff failed to assert any rights against defendant, until this suit was instituted in October of 1949. That, believing such statements by a vice-president of plaintiff, and in reliance thereon, defendant has expended large sums of money in the production of such machines and methods. That, by reason of the foregoing facts, plaintiff is estopped to assert infringement by defendant of any of the patents in suit, and is barred by laches and acquiescence from asserting the cause of action [21] alleged in the Complaint.

(1) That certain of the claims of Poux Patent Nos. 2,078,017 and 2,169,176, alleged herein by plaintiff to be infringed, were first inserted in the then pending Poux applications for the patents now alleged to be infringed by defendant more than two years after the public including this defendant had, through competitors in the slide fastener industry, and the granting of Letters Patent to others, acquired the right to the subject matter of such claims. [22]

COUNTERCLAIM

1. This counterclaim is filed and the jurisdiction of the Court is invoked to obtain relief pursuant to Section 4 of the Act of Congress of Octo-

ber 15, 1914. (15 U.S.C. Sec. 15) commonly known as the Clayton Act, for injuries resulting from violations, as hereinafter alleged, of Sections 1 and 2 of the Act of Congress of July 2, 1850 (15 U.S.C. Sec. 1, 2) commonly known as the Sherman Act, and of Section 3 of the Clayton Act (15 U.S.C. 14).

(A) This counterclaim relates to the manufacture, distribution and sale of slide fasteners, commonly known as zippers, production machines and methods of manufacture thereof.

(B) Constituent parts of the machine used in the trade in the making of such zippers include mechanisms effecting gap spacing or interruption of the closely spaced rows of fastener elements or members by interrupting the metal feed or "skipping" the tape.

2. For some time, in or about 1947, up to and including the date of filing of this counterclaim, plaintiff, (then Hookless Fastener Company), has been constantly engaged in a continuing combination and conspiracy to restrain and to monopolize, and to attempt to monopolize, trade and commerce among the several states of the United States and with foreign nations in slide fasteners, commonly called zippers, having acquired in the interim at least seventy-five (75) per cent of the United States market therefor, all in violation of Sections 1 and 2 of the Act of Congress of July 2, 1890 (15 U.S.C., Sections 1 and 2) commonly known as the Sherman Anti-Trust Act, with the effect of substantially lessening competition and tending to create a mo-

nopoly in the manufacture and sale of such slide fasteners in violation of Section 3 of the Act of Congress of October 15, 1914, (15 U.S.C. 14), commonly known as the Clayton Act. Most of such efforts are evidenced by written agreements which formed a part of such combination and conspiracy, and by acts of and acquisitions of property by plaintiff, including [23] Letters Patent of the United States, all designed to further such combination and conspiracy, to restrain and to monopolize and to attempt to monopolize trade and commerce among the several States of the United States and with foreign countries, and to lessen competition with plaintiff.

3. That the slide fastener and parts thereof manufactured by plaintiff are shipped by it across state lines in interstate commerce to manufacturers of goods in which such slide fasteners are incorporated, to distributors of slide fasteners, and to customers located in substantially every State of the United States.

4. Plaintiff and its predecessors, from the date of the incorporation of the latter, has concentrated its activities and resources on the development especially of slide fasteners, and during the decade starting with the first of January 1920, plaintiff or its predecessor claimed to have a monopoly of the United States Letters Patent covering the then only commercial slide fastener, and methods and machines for the manufacture thereof.

5. Thereafter, plaintiff or its predecessor ac-

quired a large number of patents relating to slide fasteners and parts thereof and methods of manufacture thereof and abused and misused its said patent holdings to prevent competition in commerce in the manufacture and sale of such slide fasteners, parts thereof, machines and methods.

6. That, as patent owner or licensor of a large number of U. S. Letters Patent, plaintiff has sought to intimidate, harass and discourage competitors, to block and impede the development by others of the manufacture of slide fasteners and the constituent parts of machines and methods used in making slide fasteners, and has imposed upon competitors licenses and agreements requiring that the licensee compel such licensee's customers to take licenses under the same licensed patents directly from the [24] plaintiff in such manner that the plaintiff shall collect at least two royalties upon the same licensed patent and shall also control competition.

7. That about April 1949, in accordance with its usual practice, plaintiff acquired United States Patent No. 2,437,793, essentially for the purpose of assisting it in the continuance of its monopoly and especially to sue defendant, a relatively small manufacturer of such slide fasteners, well knowing that the patent was invalid, and that David Silberman, the patentee, (the same David Silberman referred to by the Court by a relatively recent decision of the Federal Court decision of the Second Circuit in *Conmar v. Lamar and David Silberman*), was not the true inventor of the subject matter

disclosed and claimed in said patent, and that, upon information and belief, plaintiff is making no commercial use of any of the inventions covered by any of the claims of said Letters Patent.

8. That, upon information and belief, during the course of plaintiff's attempt to monopolize and monopolization, it has succeeded in controlling more than seventy-five per cent of the commercial sales of slide fasteners in the United States, and in restraining competition in commerce therein.

9. That plaintiff and its predecessors have never validated any of the patents enumerated in this suit, but, on the contrary, have brought many suits in various Federal Courts throughout the country under one or more of such patents with the sole intention of furthering its attempt to monopolize and monopolization by having the defendant recognize the validity of the patents sued upon and their infringement, whether or not such was true, and, in most instances, have settled such suits by requiring the defendant therein to accept a relatively limited quota of slide fasteners in the commercial market of the United States.

10. That plaintiff is continuing its attempt to monopolize [25] and monopolization essentially through Letters Patent of the United States, despite the fact that the patent art is now a relatively crowded one, and, that, in the present suit, plaintiff is unreasonably using and asserting claims under Letters Patent owned by it against this defendant who, under any reasonable interpretation

of such claims, does not infringe them, and that one or more of said suits have been brought by the plaintiff against a defendant or defendants for the manufacture of slide fasteners, which defendant or defendants were not even manufacturing the major parts of slide fasteners, such as "stringers" comprising tapes provided with rows of predetermined spaced interlocking elements.

11. That the acts of plaintiff, as hereinabove set forth in Paragraphs marked 2 to 10, inclusive, hereof are forbidden by Sections 1 and 2 of the Sherman Act above referred to, and said acts have injured defendant in its business by preventing and restricting the sale by defendant of its products, thereby injuring the defendant to the extent of Two Hundred Fifty Thousand (\$250,000.00) Dollars.

12. That the acts of plaintiff as hereinbefore set forth in paragraphs numbered 2 to 10, inclusive, hereof, are forbidden by Section 3 of the Clayton Act, above referred to, and said acts have injured defendant in its business by preventing and restricting the sale by defendant of its products, thereby injuring defendant to the extent of Two Hundred Fifty Thousand (\$250,000.00) Dollars.

Therefore, Defendant, Union Slide Fastener, Inc., counterclaiming prays:

(a) That plaintiff Talon be ordered to pay treble the amount of damages sustained by defendant by reason of the unlawful combination and conspir-

acy to restrain and monopolize trade herein described. [26]

(b) That the court allow the defendant, and order plaintiff to pay, the full cost of this suit, including reasonable attorneys' fees for the services of defendant's attorneys.

(c) That plaintiff and its officers, directors, agents, representatives and all persons and corporations acting or claiming to act on behalf of it be enjoined from committing the acts hereinabove complained of to the detriment of defendant's business, as hereinabove set forth.

(d) That defendant be granted such further and other relief as the Court shall deem just in the premises.

Dated, Los Angeles, California, this 16th day of April, 1951.

/s/ SOLOMON KLEINMAN,
Attorney for Defendant. [27]

Acknowledgment of Service Attached. [28]

[Endorsed]: Filed April 19, 1951.

[Title of District Court and Cause.]

REPLY TO COUNTERCLAIM

Comes now the Plaintiff through its attorneys and in reply to the Counterclaim herein alleges, avers and denies as follows:

I.

Answering Paragraph I of the Counterclaim,

Plaintiff admits that the jurisdiction of this court on this Counterclaim is revoked as alleged by Defendant. Answering Paragraph I (A) and I (B), Plaintiff admits the allegations contained therein. Further answering Paragraph I, Plaintiff denies each and every other allegation contained therein.

II.

Answering Paragraph II, Plaintiff denies each and every allegation contained therein.

III.

Answering Paragraph III of the Counterclaim, Plaintiff [29] admits the allegations contained therein.

IV.

Answering Paragraph IV of the Counterclaim, Plaintiff admits that substantially continuously since its date of incorporation it has engaged in the development of slide fasteners and methods of manufacture for making slide fasteners and parts thereof, but denies each and every other allegation contained therein.

V.

Answering Paragraph V of the Counterclaim, Plaintiff admits that since January, 1930, it has acquired a number of patents relating to slide fasteners and parts thereof and methods of manufacture thereof, but denies each and every other allegation contained therein.

VI.

Answering Paragraph VI of the Counterclaim,

Plaintiff denies each and every other allegation contained therein.

VII.

Answering Paragraph VII of the Counterclaim, Plaintiff admits that on April 19, 1949, it purchased United States Patent No. 2,437,793, granted to David Silberman, but denies each and every other allegation contained therein.

VIII.

Answering Paragraph VIII of said Counterclaim, Plaintiff denies each and every other allegation contained therein.

IX.

Answering Paragraph IX of said Counterclaim, Plaintiff denies each and every allegation contained therein. [30]

X.

Answering Paragraph X of said Counterclaim, Plaintiff denies each and every allegation contained therein.

XI.

Answering Paragraph XI of said Counterclaim, Plaintiff denies each and every allegation contained therein.

XII.

Answering Paragraph XII of said Counterclaim, Plaintiff denies each and every allegation contained therein.

XIII.

Further answering said Counterclaim as a further and separate complete defense thereto, Plain-

tiff alleges that said Counterclaim fails to state a claim upon which relief can be granted.

Wherefore, Plaintiff prays:

1.

That Defendant's Counterclaim herein be dismissed and the Defendant take nothing thereby;

2.

That Plaintiff recover from Defendant its cost and disbursements herein;

3.

That Plaintiff have such other and further relief as to the court may seem just, including a reasonable attorney's fee.

Dated at Los Angeles, California, this 4th day of May, 1951.

LYON & LYON,
/s/ CHARLES G. LYON,
Attorneys for Plaintiff. [31]

Affidavit of Service Attached. [32]

[Endorsed]: Filed May 5, 1951.

[Title of District Court and Cause.]

FURTHER INTERROGATORIES PRO-
POUNDED TO DEFENDANT UNDER
RULE 33 RCP AND ANSWERS THERETO

Comes now the plaintiff and propounds the following further interrogatories pursuant to Rule 33

of the Federal Rules of Civil Procedure, to be answered by the defendant, by an officer or officers thereof, competent to testify in its behalf under oath:

37.

During the six years next preceding October 17, 1949 (the date of filing of plaintiff's complaint herein) has defendant sold or offered for sale any machines for the production of stringers, i.e., lengths of tape having affixed thereto a plurality of zipper elements?

To Lyon & Lyon, Esq., attorneys for Plaintiff, 811 West Seventh Street, Los Angeles 17, California:

The answer of the above named Defendant, Union Slide Fastener, Inc., to the further interrogatories for its examination, served on it by the above named Plaintiff, is as follows:

(a) Yes. Similar in all consequential details to the machines stated by Mr. McKee in 1948 to be clear of infringement of patents owned by plaintiff as of that date.

38.

If the answer to Interrogatory 37 is in the affirmative, did any of such machines differ in any material respect [44] from the machines previously referred to in defendant's answer to Interrogatory 4?

(a) No. The machines were similar in all consequential details to those stated by Mr. McKee in 1948 to be clear of infringement of all patents then owned by plaintiff.

39.

If the answer to Interrogatory 38 is in the affirmative, state with full particularity the respects in which each such machine sold or offered for sale by defendant differed from those previously referred to in defendant's answer to Interrogatory 4.

(a) No. The machines were similar in all consequential details to those stated by Mr. McKee in 1948 to be clear of infringement of all patents then owned by plaintiff.

40.

Identify each patent upon which defendant will rely (in addition to those previously identified) to substantiate any of the allegations of paragraphs (a) to (h) inclusive of defendant's amended answer, giving the name of the inventor, the patent number, and the date of issue of each such patent.

(a) 2,437,793—Silberman.

2,444,706—S. Loew—July 6, 1948.

1,415,477—Puc—May 9, 1922.

See also Answer to Interrogatory No. 11.

41.

Identify each other publication upon which defendant will rely at the trial (in addition to those previously identified) to substantiate any of the allegations of paragraphs (a) to (h) inclusive of defendant's amended answer, giving for each the title of the publication, the date of publication, and the particular page or pages to be relied upon.

(a) Findings of fact and conclusions of law in the case of Conmar Products Corporation v. Lamar

Slide Fastener Corporation and David Silberman, Civil Action 9-197 Southern District of New York, dated December, 1942; certain documents to be supplied by plaintiff in answer to various of defendant's counter-interrogations (1-106); and such documents requested therein which are not supplied by Talon but to which defendant may nevertheless acquire access. Defendant in many instances knows, upon information and belief, of the existence of certain (or many) of the documents, not in Defendant's possession but available to plaintiff, and cannot specify the particular parts thereof to be relied upon before inspection which has been requested by certain of the aforesaid counter-interrogatories or interrogatories 1-106; documents in Civil Action #1276 in the U. S. District Court for the District of Delaware; Hydraulic Brake Company v. Thermoid Company, Bendix Aviation Corporation, Wagner Electric Corporation on Counterclaim; decision in Conmar v. Universal; copies of documents relating to cases upon which discovery has been asked by defendant from plaintiff in defendant's interrogatories 1-106.

42.

Identify each prior use, if any, upon which defendant will rely at the trial to substantiate any of the allegations of paragraphs (a) to (h) inclusive of defendant's amended answer, giving for each the date and place of such prior use; the character of the article, machine, method, or process used; the full name and address of each person

known by defendant to have firsthand knowledge of such prior use; and the particular allegation or allegations of said answer to which the prior use is believed to be pertinent.

(a) Can be answered only after defendant has had inspection of plaintiff's answers to certain of the defendant's interrogatories 1-106 providing the names, dates and places of prior uses, character of machines, and method or process used.

43.

With reference to paragraph (i) of defendant's amended [45] answer,

(a) Explain with full particularity the manner in which defendant believes plaintiff to have "sought to intimidate, harass, and discourage competitors"; and

(b) State the name and address of each competitor believed by defendant to have been so intimidated, harassed, or discouraged.

(a) By bringing suit against certain defendants such as Carney, before machines had been built or operated or products manufactured which were fairly covered by any of the claims allegedly relied upon, or by suing upon such patents as the patents here in suit, firms who purchased their chain from others and merely assembled components thereto such as Talon, Inc. v. Closurette Company of America, Civil Action 48-481 filed December 29, 1948, in U. S. District Court, Southern District of New York, either by reason of willful negligence in not determining the facts relating to the operations of

such defendants or knowingly and with fraudulent intent. By the events transpiring before, during and after a meeting held on or about September 30, 1949, at Talon, Inc.'s Los Angeles offices between Talon's employees, one Jaeger and one Detwiler and representatives of three competing companies (including defendant) in which plaintiff's representatives and agents Jaeger and Detwiler made certain threats to repeat a course of action which they stated had been followed by Talon in the East (of the U.S.A.) by the use of plaintiff's subsidiary Wilzip and its products, particulars of which are requested in defendant's Interrogatories 87 to 96.

(b) Joy Fastener Company, Franklin, Pennsylvania.

Syncro Slide Fastener Corporation, New York, N. Y.

Swan Fastener Corporation, Boston, Mass.

Max Lange and Slidelock Corporation, New York, N. Y.

Star Fastener, Inc., Brooklyn, N. Y.

Carney Fasteners, Inc., New York, N. Y.

44.

With further reference to paragraph (i) of defendant's amended answer,

(a) Explain with full particularity the manner in which defendant believes plaintiff to have sought "to block and impede the development by others of the manufacture of slide fasteners and the constituent parts of machines and methods used in making slide fasteners"; and

(b) State the name and address of each person, corporation, firm, or association believed by defendant to have been so blocked or impeded.

(a) By quota control in plaintiff's licenses; requiring sub licenses controlling building of machines by plaintiff's licensees, and by other inequitable trade agreements and practices which will be disclosed by answers to defendant's interrogatories 1 to 106.

(b) Those companies listed in answer to Interrogatory 43 and others who will be named in answers to defendant's interrogatories 1 to 106.

45.

With further reference to paragraph (i) of defendant's amended answer,

(a) Give the name and address of each "competitor" upon whom defendant believes that plaintiff has "imposed licenses and agreements" of the character described in said paragraph (i); and

(b) Give such particulars as are known to defendant regarding the date and subject matter of each such agreement.

(a) Names will be furnished from answers by plaintiff to defendant's interrogatories.

(b) Such particulars will be furnished from the complete answers by plaintiff to defendant's interrogatories.

46.

With reference to paragraph (j) of defendant's amended answer, give the name, address, and position in defendant's organization of each of the

“certain representatives” with whom said David Silberman met as alleged, and give the time and place of each such meeting. [46]

(a) Sigmund Loew, then President of defendant, present address unknown, and Philip Lipson, now President of defendant, 1829 Blake Avenue, Los Angeles, California, at Hollywood Roosevelt Hotel during the month of August, 1948.

47.

With further reference to paragraph (j) of defendant's amended answer,

(a) State whether the alleged agreement between David Silberman and defendant was oral or written;

(b) If said alleged agreement was written, attach to the answers to these interrogatories a copy of said agreement, or state where such agreement may be inspected and copied; and

(c) If said alleged agreement was oral, state the substance of said agreement, give the name, address if known, and connection with the defendant if any, of each person present when the agreement was made.

(a) Oral.

(b) Agreement was not in writing.

(c) The persons present were those named in answer to Interrogatory 46 and David Silberman and a gentleman who appeared to be associated with him. The substance of the agreement was that Union would refrain from interference with the operations of David Silberman in selling and/or

licensing chain machines outside the territorial limits of the United States and that the aforesaid Silberman would refrain from involving Union in any litigation concerning the Silberman patent No. 2,437,793 which Silberman stated would not "hold water in court", but which Silberman claimed would enable him to sue for alleged conspiracy to interfere with business being done by Silberman in foreign countries.

48.

With reference to paragraph (1) of defendant's amended answer,

(a) Identify each patent granted "to others" upon which defendant will rely at the trial to substantiate the allegation that defendant "acquired the right to the subject matter" of "certain of the claims of Poux Patent Nos. 2,087,017 and 2,169,176", giving the name of the inventor, the patent number, and the date of issue of the patent in each instance;

(b) State how defendant acquired any rights "through * * * the granting of (such) Letters Patent to others" and the exact nature of any such rights;

(c) Attach to the answers to these interrogatories a copy of each document upon which defendant will rely at the trial to substantiate the alleged acquisition of such rights, or state where each such document may be inspected and copied; and

(d) Specify, by number, the particular claims of

each of said Poux patents referred to by defendant as "certain of the claims". [47]

(a) Sundback U. S. Patent No. 1,331,884 of February 24, 1920 and Puc U. S. Patent No. 1,415,477 of May 9, 1922.

(b) 1,331,884 Sundback discloses metal strip feeding means, commonly driven with scoop severing and forming punches, and tape feeding and clinching means by which scoops or elements formed from "continuous" metal strip are formed and severed from the strips and clinched in predetermined spaced relation which became public property upon expiration of the Sundback Patent 1,331,884. Plaintiff's interpretation of claims of Poux's Patents 2,087,017 and 2,169,176 sufficiently broadly to read upon defendant's machines, methods and products, renders such claims vulnerable to anticipation by the expired Sundback Patent 1,331,884.

(c) Copies of the aforesaid patents may be ordered and obtained from The Commissioner of Patents, Washington 25, D. C. at a cost of \$0.25 each.

(d) Poux 2,078,017.

When claims 1, 2 and 3 are so broadly interpreted by plaintiff as reasonably to be claimed to be infringed by defendant, leaving the scoop or element jaw portions "integral with" rather than "connected to" the "rod" or "strip" or portions thereof (as in Sundback 1,331,884) the distinction is immaterial and the claims are anticipated by Sundback. When the claims are so interpreted, the only distinction over claims 1, 2 and 3 of Poux

2,078,017 of claim 4 of Poux is the tape feeding steps occurring between scoop leg clinching operations; but this step is old in Sundback 1,331,884. Claims 6, 8, 16 and 17, also, are fully anticipated by Sundback 1,331,884.

Defendant uses no "rod" in his capital method and if plaintiff ignores the distinction between "rod" and "strip" which has apparently been done, then obviously in the Poux claims, the term "integral" can properly be interpreted broad enough to include or comprehend "attached" and "unit" and the terms "sever" can properly be interpreted broad enough to include "separate". The Poux claims 1 to 4 and other claims are fully anticipated by Sundback 1,331,884. Leaving the formed jaw portions integral with the "rod" instead of "separate" by feed between "rod" or "strip" side portions of Sundback involves no invention when claims 1, 2 and 3 are so broadly construed as to read upon defendant's method for the feeding of the tape between scoop jaw clinching operations, the only apparent novel feature in claim 4 of Poux over claims 1, 2 and 3 of Poux. Claims 6, 8, 16 and 17 of Poux 2,078,017 are fully met in Sundback 1,331,884 under such broad interpretation.

Defendant uses no "rod" in the true sense, but to ignore this limitation, then claims 1 to 4 are also fully anticipated in Sundback where the word "integral" is given the above broad interpretation to include "attached", and where "sever" is considered broadly enough to include "separate". It is

to be noted, here, that defendant at no time spreads the jaws of his scoops since they are formed spread and thereafter clinched. Regarding claim 16 of Poux, the form scoops of Sundback 1,331,884 are "connected end to end" between confining strip portions by which they are fed.

Poux 2,169,176.

Since "severing" can be construed broadly enough to include "separate" (see discussion of Poux 2,078,017 above) then claims 3, 5, 6 and 7 of Poux 2,169,176 are anticipated by Sundback 1,331,884 since the word "unit" (claims 3, 6 and 7) for instance, is met by the scoops of Sundback 1,331,884 since they need not be integral.

49.

With further reference to paragraph (1) of defendant's amended answer,

(a) Give the name and address of each of the "competitors in the slide fastener industry" through whom defendant claims to have "acquired the right to the subject matter" of "certain of the claims of Poux Patent Nos. 2,087,017 and 2,169,176";

(b) State how such rights were alleged to have been acquired in each instance; and

(c) Attach to the answers to these interrogatories a copy of each document, upon which defendant will rely at the trial to substantiate the alleged acquisition of such rights, or state where each such document may be inspected and copied.

(a) It is a question of law whether defendant

has acquired rights to the subject matter of the patents referred to.

(b) Laches and Public Domain and repeated misuse of plaintiff's patents.

(c) Such documents will be disclosed in the complete answers to defendant's Interrogatories 1 to 106 by plaintiff.

50.

With separate reference to each machine for the production of stringers that was either used or sold by defendant, as inquired about in Interrogatories 1 and 37,

(a) Was the machine made by defendant or was it acquired from another party?

(b) Does defendant claim that the machine was or is licensed under any of the patents in suit?

(c) If the answer to Interrogatory 50 (b) is in the affirmative, attach to the answers to these interrogatories a copy of each such license or state where each such license may be inspected and copied; or if any such license was oral, give the date of, the names of the parties to, and a statement of the substance of the license, and the number of each patent in suit under which rights are alleged by virtue of the license.

(a) All of the essential mechanisms were made and assembled by defendant.

(b) No, except under oral license from David Silberman referred to in answer No. 46, and except that Laches, Public Domain and Misuse of Patents confers a License.

(c) See answer to Interrogatory No. 46.

Dated: July 25, 1951.

TALON, INC.,
/s/ By CHARLES G. LYON,
Attorney for Plaintiff. [48]

Affidavit of Service Attached. [49]

[Answers dated March 3, 1952. Signed Union Slide Fastener, Inc. By Philip Lipson, Defendant.]

[Endorsed]: Further Interrogatories Filed July 26, 1951. Answers Filed March 3, 1952.

[Title of District Court and Cause.]

INTERROGATORIES PROPOUNDED TO
PLAINTIFF UNDER RULE 33 FRCP
AND ANSWERS THERETO

Union Slide Fastener, Inc., the defendant herein, propounds to the plaintiff, Talon, Inc. the following interrogatories to be answered within fifteen days from the date of service hereto pursuant to Rule 33 of the Federal Rules of Civil Procedure.

To the Defendant Union Slide Fastener, Inc., and to its attorneys, Fulwider & Mattingly, Robert W. Fulwider, Esq., and Solomon Kleinman, Esq.:

Plaintiff's answers to the interrogatories propounded by Defendant and served March 18, 1952 are as follows:

1.

Interrogatory No. 1: "Was any agreement, oral or written, express or implied, entered into by and between the plaintiff herein, and David Silberman, the patentee of United States Letters Patent No. 2,437,793 prior to, or about the time said Letters Patent was assigned by said David Silberman to the plaintiff by assignment dated April 19, 1949 and recorded in the United States Patent Office on April 23, 1949 in Liber X-219, Page 380?" [92]

Answer: Yes.

2.

Interrogatory No. 2: "If the answer to the preceding question is in the affirmative, state the date and terms of any such agreement, in detail."

Answer: Copies of agreements are appended marked Exhibit 1. Later agreement supersedes former agreements.

3.

Interrogatory No. 3: "Was the action herein instituted by plaintiff at the request of said David Silberman?"

Answer: No.

4.

Interrogatory No. 4: "Was the action herein instituted by plaintiff in accordance with the provisions of any agreement oral or written; express or implied at any time made between said David Silberman and the plaintiff?"

Answer: No.

4(a)

Interrogatory No. 4(a): "If your answer is in

the affirmative, was the action started pursuant to the agreement referred to in interrogatory No. 1?"

Answer: No answer required.

5.

Interrogatory No. 5: "Was the plaintiff informed at any time by said David [93] Silberman, of any conversation between the said Silberman and defendant or a representative or representatives of defendant or defendant's predecessor, relating to United States Letters Patent No. 2,437,793?"

Answer: No.

6.

Interrogatory No. 6: "If the answer to the preceding question is in the affirmative, set forth in detail the information so conveyed by said Silberman to the plaintiff."

Answer: No answer required.

7.

Interrogatory No. 7: "Was plaintiff at any time prior to the institution of this action informed by anyone that said David Silberman had threatened to sue one Sigmund Loew and/or Union Slide Fastener, Inc. under said United States Letters Patent No. 2,437,793 prior to the assignment of said Letters Patent by said Silberman to plaintiff?"

Answer: Prior to the institution of this action, plaintiff had been informed by David Silberman that he was considering suing Union Slide Fastener, Inc. for infringement of U. S. Letters Patent No. 2,437,793, but plaintiff had no knowledge of

any actual threat of suit having been made to either Sigmund Loew and/or Union Slide Fastener, Inc.

8.

Interrogatory No. 8: "If the answer to the preceding question is in the affirmative, please give the name and address of the person who gave such information to plaintiff and the date and place where such [94] information was given to plaintiff."

Answer: No answer required.

9.

Interrogatory No. 9(a) and (b): "Was the plaintiff informed at any time prior to April 19, 1949, that said David Silberman, the patentee of United States Letters Patent No. 2,437,793 had admitted that said United States Letters Patent

(a) would not stand up in Court

(b) that suit under said Letters Patent would be instituted by said Silberman in order to protect rights or licenses held by Silberman under foreign patents corresponding to United States Letters Patent No. 2,437,793?"

Answer: No. However, plaintiff was informed by David Silberman that he had granted rights under or had sold patents held by him in foreign countries and based upon the invention of U. S. Patent 2,437,793 for very substantial considerations, and as set forth in plaintiff's Exhibit 1 supplied in answer to interrogatory 2, Silberman informed plaintiff that he had sold machines made

under Patent 2,437,793 in suit, or had granted foreign manufacturing rights under the invention thereof to the following listed concerns located outside of the U. S.

Cierre Fast, S. A., Mexico, D. F., Mexico

Lightning Fasteners Limited, of Manchester, England, (a subsidiary of Imperial Chemical Industries, Ltd., of Manchester, England)

Clix Fastener Corporation, of Canada

Jet Slide Fastener Co., of Canada (formerly Fly-Fast Co.)

Companhia Brasileira De Metals, of Brazil

Zik Fastener Co., of Palestine

Colombia Metal Co., of Colombia [95]

10.

Interrogatory No. 10: "If the answer to either part of the preceding question is in the affirmative, please state the name and address of the person giving such information to plaintiff and the date and place where such information was given."

Answer: During negotiations for purchase of the patent in suit by plaintiff, David Silberman listed all machines then known to be licensed under the patent in suit. Such conversation took place either at Meadville, or New York City, all prior to the assignment of the patent in suit to plaintiff and were reduced to writing as part of the assignment agreement.

11.

Interrogatory No. 11: "Was the plaintiff informed at any time prior to the institution of this

action that said David Silberman had agreed with the defendant or its predecessor to refrain from asserting any rights against the defendant or its predecessors under United States Letters Patent No. 2,437,793?"

Answer: No.

12.

Interrogatory No. 12: "If the answer to the preceding question is in the affirmative, please state the name and address of the person giving such information to plaintiff, the date and place where such information was given, and the substance of such agreement as related to plaintiff."

Answer: No answer required. [96]

13.

Interrogatory No. 13: "Did the plaintiff make any investigation of the validity of United States Letters Patent No. 2,437,793 at any time prior to the commencement of this action against defendant herein?"

Answer: No special investigation was required because the negotiations for the purchase of Letters Patent No. 2,437,793 were carried on by representatives of the plaintiff whose business it was to be familiar with the slide fastener art.

14.

Interrogatory No. 14: "If the answer to the preceding question is in the affirmative, please state in detail the nature and extent of such investigation, specifying what documents, decisions and rulings,

if any, were examined by plaintiff or reported or described to plaintiff including, but not limited to, documents, decisions and rulings filed in any Court of the United States or in the United States Patent Office.”

Answer: The negotiations for the purchase of the Silberman patent were carried on by representatives of the plaintiff whose business it was, over a period of many years, to be familiar with the decisions and rulings of the United States Patent Office and the Federal Courts of the United States relating to slide fastener patents.

15.

Interrogatory No. 15: “Was the plaintiff at any time prior to the institution of this action informed by anyone that a person other than said David Silberman claimed to be the inventor of the inventions [97] described in and covered by United States Letters Patent No. 2,437,793?”

Answer: Prior to the institution of this action but subsequent to the purchase of patent No. 2,437,793 by plaintiff, plaintiff was informed of the existence of an affidavit by one John J. Havekost, purportedly dated September 8, 1948, and plaintiff was informed of the withdrawal of any claims to inventorship which may have been made in such affidavit, which withdrawal was made by an affidavit dated the 22nd day of August, 1949, a photostatic copy of the latter affidavit being attached hereto and marked Exhibit 2.

16.

Interrogatory No. 16: "If the answer to the preceding interrogatory is in the affirmative, please state the name and address of the person or persons giving such information, the time and place where such information was given to plaintiff and the name and address of the person or persons other than said David Silberman who claimed to be the inventor of the inventions described in and covered by United States Letters Patent No. 2,437,793."

Answer: The affidavit, plaintiff's Exhibit 2 appended to these interrogatory answers, was sent by mail to plaintiff's attorney on or about September 8, 1949 by David Silberman of 10 MacDougal Alley, New York City.

17.

Interrogatory No. 17: "Was the plaintiff at any time prior to the institution of this action informed that the said David Silberman had paid to a person or persons claiming to be the inventor of the inventions described in and covered by U. S. Letters Patent No. 2,437,793 a royalty or other payment?" [98]

Answer: Only to the extent that plaintiff's Exhibit 2 contains the information suggested by the interrogatory.

18.

Interrogatory No. 18: "If the answer to the preceding question is in the affirmative, please state the name and address of the person giving such information to plaintiff, the time and place where such information was given to plaintiff, the name

and address of the person or persons to whom such payment was made by said David Silberman, the amount of such payments, and the times or periods of such payments.”

Answer: See preceding answer.

19.

Interrogatory No. 19: “Did the plaintiff request the defendant which was then located at 10731 Chandler Boulevard, North Hollywood, California, in or about the month of September, 1947, to permit the plaintiff to have its representative examine the defendant’s manufacturing operations?”

Answer: Yes.

20.

Interrogatory No. 20: “Did the defendant agree to permit a representative of the plaintiff to inspect defendant’s production machinery for manufacturing slide fasteners and/or stringers therefor?”

Answer: Yes. [99]

21.

Interrogatory No. 21: “Give the full name and title in the plaintiff’s organization of one Grosvenor McKee.”

Answer: Grosvenor S. McKee, Vice President, Works Manager, and a Director of Talon, Inc.

22.

Interrogatory No. 22: “State the powers and duties of the said McKee.”

Answer: Those incident to positions indicated in the answer to interrogatory 21. These powers

and duties specifically do not include any authority to make decisions respecting the patent rights of the plaintiff other than the right to vote as a member of the Board of Directors.

23.

Interrogatory No. 23: "Did the said McKee, in the early part of 1948 visit defendant's place of business and there make an inspection of defendant's machines and other equipment?"

Answer: Yes. The visit was incidental to a trip to the West Coast on entirely unrelated matter and was merely a casual inspection.

24.

Interrogatory No. 24: "If the answer to the preceding interrogatory is in the affirmative, please state the date on which such inspection was made."

Answer: The inspection was made on or about April 15, 1948 at 10731 Chandler Boulevard, North Hollywood, California. [100]

25.

Interrogatory No. 25: "If the answer to interrogatory number 23 is in the affirmative, please state whether the said McKee informed the defendant that defendant's machines and equipment in his opinion did not constitute infringement of any patents owned by plaintiff."

Answer: No. Said McKee has no training in the interpretation of patents and no special knowledge of patents owned by plaintiff which would enable him to give any opinion concerning infringement thereof.

26.

Interrogatory No. 26: "Was the said McKee informed of the plan of the plaintiff to institute this action?"

Answer: Yes, before the suit was filed, but no such plan was in existence at the time of the visit of said McKee at defendant's place of business in April of 1948.

27.

Interrogatory No. 27: "Did the said McKee make any report to plaintiff following his inspection of defendant's machinery and equipment."

Answer: Yes.

28.

Interrogatory No. 28: "If the answer to the preceding interrogatory is in the affirmative, please state the nature and contents of such report and the date on which such report was made to plaintiff." [101]

Answer: Attached hereto and marked Plaintiff's Exhibit 3 is the report of Grosvenor S. McKee to the plaintiff, dated April 29, 1948, to which interrogatories 27 and 28 refer.

29.

Interrogatory No. 29: "State the date upon which plaintiff first instituted negotiations with David Silberman, the patentee of United States Letters Patent No. 2,437,793 with respect to the assignment of said patent to the plaintiff."

Answer: About the Fall of 1948.

30.

Interrogatory No. 30: "List each action for patent infringement filed by plaintiff or its predecessor Hookless Fastener Co. upon any one or more of the following patents, stating the Courts in which such actions were instituted and the dates of the commencement of such actions."

Patent Number	Patentee
1,903,659	Smith
2,026,413	Binns
2,078,016	Poux
2,078,017	Poux
2,169,176	Poux
2,437,793	Silberman

Answer: See attached list, Plaintiff's Exhibit 4.

31.

Interrogatory No. 31: "List the claims of each patent relied upon in each of said actions." [102]

Answer: See attached list, Plaintiff's Exhibit 4.

32.

Interrogatory No. 32: "State which action or actions, if any, for patent infringement instituted by plaintiff or its predecessor Hookless Fastener Co., with respect to any of the patents listed in interrogatory No. 30 resulted in a trial of the issues therein by a duly constituted Court."

Answer: None resulted in a trial.

33.

Interrogatory No. 33: "State which of the claims

of the respective patents, if any, listed in interrogatory No. 30, have been held invalid by a duly constituted Court of competent jurisdiction, and the name or names and location of such Courts, and the titles of the actions in which any such determination was made."

Answer: None have been held invalid.

34.

Interrogatory No. 34: "State whether the claims of any of the patents listed in interrogatory No. 30 have been interpreted by a duly constituted Court of competent jurisdiction as to their scope, and the titles of the actions in which such interpretations were made and the name and location of the Court making any such interpretation."

Answer: Only as shown by the information contained in Plaintiff's Exhibit 4. [103]

35.

Interrogatory No. 35: "List the titles of the actions and Courts where instituted, of any actions for infringement of any of the patents listed in interrogatory No. 30 instituted by plaintiff which were settled or concluded by consent decrees."

Answer: See attached list, Plaintiff's Exhibit 4.

36.

Interrogatory No. 36: "If any actions for patent infringement of any of the patents listed in interrogatory No. 30 were settled or concluded by consent decrees, set forth in detail the terms of

such settlements and/or the terms of any agreements providing for such settlements or for the entry of consent decrees.”

Answer: Attached hereto and marked Plaintiff's Exhibit 5 are photostatic copies of each agreement of the character referred to in interrogatory 36.

37.

Interrogatory No. 37: “Did any agreement or agreements entered into by plaintiff settling or terminating any patent infringement suit or suits brought by plaintiff or its predecessor Hookless Fastener Co. based upon any of the patents referred to in interrogatory No. 30 contain a provision whereby any defendant or defendants in any such suit was required to agree not to lease or sell to any third party not licensed by plaintiff under one or more of said patents under written agreement with the plaintiff, attaching or chain machines embodying or employing the inventions and capable of practicing the methods described and claimed in any of the said patents listed in [104] interrogatory No. 30, unless such third party were located outside the United States of America, its territories and possessions, or unless such machines were leased or sold by any such defendant or defendants for use outside of the United States of America, its territories or possessions? Explain fully.”

Answer: The full terms of such agreements are shown in the exhibits supplied in answer to interrogatory 36.

38.

Interrogatory No. 38: "Did any agreement or agreements entered into by plaintiff settling or terminating any patent infringement suit or suits brought by plaintiff or its predecessor based upon any of the patents referred to in interrogatory No. 30 contain a provision whereby any defendant or defendants in any such suit agreed to obtain from any person or concern foreign to the United States, with which such defendant or defendants had previously made an agreement or with which he or it should thereafter make such an agreement to lease or sell attaching or chain machines for use in foreign countries embodying or employing any invention or capable of practicing any method described and claimed in any of the patents listed in interrogatory No. 30, a license to make or have made in the United States of America, its territories and possessions machines and methods for making slide fastener chain embodying or employing any invention hereafter, but not heretofore owned or controlled by such other person or concern, with the right to grant a sub-license to plaintiff under each such invention? Explain fully."

Answer: The full terms of such agreements are shown in the exhibits supplied in answer to interrogatory 36. [105]

39.

Interrogatory No. 39: "Did any agreement entered into by plaintiff settling or terminating any patent infringement suit brought by plaintiff or its said predecessor based upon any of the patents

referred to in interrogatory No. 30 contain a provision whereby any defendant or defendants in any such suit agreed to grant to plaintiff and to each company or concern owned or controlled by plaintiff, a non-exclusive, non-transferable, royalty free license to make or have made in its or their factory, machines and methods for making slide fastener chain embodying or employing any invention to which any defendant or defendants in any such suit thereafter acquired such rights for the United States from any third party during the life of said agreement; and whereby any such defendant or defendants in such action agreed to notify and inform plaintiff of the entering into of each agreement for the lease or sale of any attaching or chain machines embodying or employing the inventions and capable of practicing the methods described and claimed in any of the said patents listed in interrogatory No. 30, including the names of the party or concern and its or their location and where the machines were to be used? Explain fully.”

Answer: The full terms of such agreements are shown in the exhibits supplied in answer to interrogatory 36.

40.

Interrogatory No. 40: “Did any agreement entered into by plaintiff settling or terminating any patent infringement suit or suits brought by plaintiff or its said predecessor based upon any of the patents referred to in interrogatory No. 30 contain a provision whereby plaintiff agreed to grant to

each person or concern to whom any [106] defendant or defendants in any such suit sold or leased machines for use in the United States, upon the recommendation of said defendant or defendants, a written license for the life of each of said patents listed in interrogatory No. 30 containing the same terms and conditions as the license granted to any defendant or defendants in any such suit, insofar as they could be applied to such other person or concern, provided:

(a) That any such defendant or defendants in such suit leased or sold to such person or concern an attaching or chain machine or machines;

(b) That such person or concern would agree not to dispute or assist others in disputing the validity of any of the claims of said patents listed in interrogatory No. 30;

(c) That such person or concern would agree to grant to plaintiff and to each company or concern owned or controlled by plaintiff a non-exclusive, non-transferable, royalty free license to make or have made and to use in its factory or factories, attaching or chain machines and methods for making slide fastener stringers embodying or employing any invention thereafter owned or controlled by such other person or concern during the life of said agreement made between plaintiff and any such defendant or defendants?"

Answer: The full terms of such agreements are shown in the exhibits supplied in answer to interrogatory 36.

41.

Interrogatory No. 41. "Did any agreement entered into by plaintiff settling or terminating any patent infringement suit brought by plaintiff or its said predecessor, based upon any of the patents referred to in interrogatory No. 30 contain a provision whereby any defendant [107] or defendants in such suit granted to plaintiff and to each company or concern owned or controlled by plaintiff a non-exclusive, non-transferable, royalty free license to make, have made, and to use in its or their factory or factories, but not to sell to others, machines and methods for making slide fasteners and components therefor, embodying or employing any invention thereafter owned or controlled by any defendant or defendants in any such suit during the life of said agreement between plaintiff and any such defendant or defendants, such license to extend for the full life of any patent describing and claiming any such invention."

Answer: The full terms of such agreements are shown in the exhibits supplied in answer to interrogatory 36.

42.

Interrogatory No. 42: "Please furnish sample copies of each type of agreement made between plaintiff and any defendant or defendants in any such suit based upon any of the patents listed in interrogatory No. 30 settling such action or providing for the conclusion thereof by consent decree."

Answer: Already supplied in answer to interrogatory 36.

43.

Interrogatory No. 43: "Please furnish sample copies of each type of agreement required to be made between plaintiff and third parties under the provisions of any such agreement made between plaintiff and any defendant or defendants in any such action based upon any of the patents listed in interrogatory No. 30."

Answer: The meaning of the term "required" is not understood. All agreements between plaintiff and third parties are similar to those [108] supplied in answer to interrogatory 36.

44.

Interrogatory No. 44: "Was plaintiff influenced in the institution of the instant action against defendant herein by the interest of David Silberman, patentee of U. S. Letters Patent No. 2,437,793, in any slide fastener manufacturing company located in the West Coast area of the United States, and operating in competition with the defendant herein."

Answer: No.

45.

Interrogatory No. 45: "Was plaintiff influenced in the institution of the instant action because of any agreements made between plaintiff and any slide fastener manufacturing company located in the West Coast area of the United States, and operating in competition with the defendant herein?"

Answer: No.

46.

Interrogatory No. 46: "If the answers to inter-

rogatories Nos. 44 and 45 or either of them are in the affirmative, state the interest, if any, of David Silberman in any such company and the name of such company; and furnish copies of any such agreement."

Answer: No answer required. [109]

47.

Interrogatory No. 47: "Describe the invention covered in U. S. Patent No. 2,078,017 issued to Poux under plaintiff's interpretation of the following language contained in the specification of said patent:

(a) 'In the present method of this application these former disadvantages are obviated. The members are formed in a preliminary operation, but the metal is left between the jaws which closes, or bridges the open ends of the jaws and consequently prevents their bunching in an effort to select and sort them for positioning. In carrying out the invention, preferably two interlocking members are arranged end to end so that the open ends of the jaws are thus closed. With any method, however, of preventing open jaws, the units may be readily run through a sorting magazine and delivered to a machine which severs, or completes the opening in the jaws and which is adapted to place and secure the members on the stringers. Thus it is possible, after the formation of the interlocking members, except for the completion of the final severing of the jaws, or the metal in the jaws, to finish the outer surfaces of the members by a tumbling operation, to plate and process the surfaces in any manner desired, and

then complete the jaws after the members have been selected or sorted in a magazine so as to form the interior surfaces of the jaws and place the members on the stringer. In some respects it is advantageous to actually complete the final forming of the interior of the jaws subsequent to any tumbling, or finishing operation in that such final finishing of the jaws gives a more definite engaging surface and assures a more definite [110] engagement on the tape. Further features and details will appear from the specification and claims.'

(b) and of the following language contained in claim 25 'separating one member from another';

(c) claims 26 and 27 'shaping at least partially the attaching prongs of one member and separating the same from another';

(d) claim 33 'severing the units from one another';

(e) claim 34 'separating one member from another thus formed';

(f) claim 35 'separating one member from another thus formed'."

Answer: Interrogatory 47 is not understood inasmuch as Poux patent No. 2,078,017 referred to therein does not contain any of the passages or claims referred to in said interrogatory as being contained in said patent. Accordingly, plaintiff is unable to answer interrogatory 47.

48.

Interrogatory No. 48: "State what application the language quoted in interrogatory No. 47 has to

Slide Fastener Chain Making 'Strip' methods wherein no interlocking element or member is formed on the strip but only after its severance therefrom and wherein the 'strip' at no time contains a plurality of interlocking elements or members as defined by said quoted language."

Answer: Interrogatory 48 is not understood since it is dependent upon interrogatory 47, which is also not understood for the reasons stated in the correspondingly numbered statement above. Accordingly, plaintiff is unable to answer interrogatory 48. [111]

49.

Interrogatory No. 49: "Describe the invention covered in U. S. Patent No. 2,169,176 issued to Poux under plaintiff's interpretation of the following language contained in the specification of said patent:

(a) 'In the present invention I accomplish this by a very effective method and with simple apparatus by forming the individual members practically complete in a continuous strip of metal, or material from which the members are made without severing one member from another.'

(b) Claim 3 'a strip consisting of a long continuous series of united interlocking members having spread jaws end to end'.

(c) Claim 5 'strip consisting of a long continuous series of united interlocking members'.

(d) Claim 6 'elongated strip of several unit interlocking members in continuous series arranged end to end.'

(e) Claim 7 'elongated strip of several unit interlocking members with the members arranged end to end'.

(f) Claim 19 'a strip for use in making slide fastener members—the members being arranged in a strip in end to end relation, etc.—.' ”

Answer: Plaintiff has withdrawn its claim of infringement of U. S. Patent 2,169,176 in order to simplify the issues of this suit and, therefore, no answer is required. [112]

50.

Interrogatory No. 50: “State what application the language quoted in interrogatory No. 49 has to Slide Fastener Chain Making ‘Strip’ methods wherein no interlocking element or member is formed on the strip but only after its severance therefrom and wherein the ‘strip’ at no time contains a plurality of interlocking elements or members as defined by the above language.”

Answer: No answer required.

51.

Interrogatory No. 51: “Did the plaintiff at any time prior to the institution of this action against defendant make any commercial use of any of the inventions claimed in United States Letters Patent No. 2,437,793?”

Answer: Yes. Defendant has made extensive commercial use of the inventions claimed in United States Letters Patent No. 2,437,793.

52.

Interrogatory No. 52: “If the answer to the

preceding interrogatory is in the affirmative, state the nature and extent of such use, the date on which such use was commenced, and the persons involved in said use.”

Answer: About April, 1947, plaintiff first used machines embodying the invention of U. S. Letters Patent No. 2,437,793, and, except for a preliminary test period, has continued to use such machines in extensive commercial operations since that date and at present is operating 16 of such machines at plaintiff's Wilson Division in Cleveland, Ohio, and is operating other machines in its subsidiary plant, Cierre Relampago S.A. de C.V., Mexico City, Mexico. Wilson Division was originally managed by Harold W. Soles, presently [113] managed by David E. Case. Mexican operations under management of F. N. Rutherford.

53.

Interrogatory No. 53: “State the estimated sales of slide fasteners in the United States made by the plaintiff within the last two years on a percentage basis, compared with the total sales of slide fasteners made in the United States during such period by all other concerns engaged in the manufacture and sale of slide fasteners in the United States.”

Answer: Plaintiff can only estimate the percentage of sales of slide fasteners made by plaintiff at somewhere between 20 and 30 per cent of the total sales of the industry in the United States. Attached hereto and marked Plaintiff's Exhibit 6 is a report of Haskins and Sells showing percentages of total

sales for the months October, November and December of 1950 and the months of January, February, and March of 1951, of plaintiff's sales as compared with other manufacturers reporting to the Slide Fastener Association. This percentage would be materially lowered had the entire industry reported to such Association.

54.

Interrogatory No. 54: "Was the plaintiff influenced in the institution of the instant action by the apparently weak financial condition of defendant?"

Answer: No.

55.

Interrogatory No. 55: "Specify in detail, giving the title and court in which [114] instituted of all actions instituted by plaintiff in which plaintiff was influenced by the apparent weak financial condition of the parties made defendants therein."

Answer: None.

56.

Interrogatory No. 56: "List each suit instituted by plaintiff or its predecessor, Hookless Fastener Co., Inc. alleging infringement of any of the patents owned by plaintiff relating to hookless fasteners or methods or machines for making same but not here in suit, giving the title in each such suit and the court in which each suit was instituted."

Answer: See attached list, Plaintiff's Exhibit 4. Other suits for infringement of other patents of plaintiff not here in suit can be ascertained by defendant from Court records.

57.

Interrogatory No. 57: "Specify, in detail, the provisions of the settlement agreement or other document disposing of the suit brought by the plaintiff against Conmar Products Corporation of Bayonne, New Jersey, instituted in the U. S. District Court, District of New Jersey, on the 18th day of October, 1937."

Answer: See appropriate agreement supplied in answer to interrogatory 36.

58.

Interrogatory No. 58: "Specify, in detail, the provisions of the settlement agreement or other document disposing of the suit brought by the plaintiff against Carney Fasteners, Inc., instituted in the U. S. [115] District Court, Southern District of New York, on the 1st day of May, 1947."

Answer: See appropriate agreement supplied in answer to interrogatory 36.

59.

Interrogatory No. 59: "Specify, in detail, the provisions of the settlement agreement or other document disposing of the suit brought by the plaintiff against Max Lange and Slidelock Corporation, instituted in the U. S. District Court, Southern District of New York, on the 10th day of March, 1947."

Answer: See appropriate agreement supplied in answer to interrogatory 36.

60.

Interrogatory No. 60: "Specify, in detail, the provisions of the settlement agreement or other doc-

ument disposing of the suit brought by the plaintiff against Closurette Corporation of America, instituted in the U. S. District Court, Southern District of New York, on the 29th day of December, 1948.”

Answer: See appropriate agreement supplied in answer to interrogatory 36.

61.

Interrogatory No. 61: “Specify, in detail, the provisions of the settlement agreement or other document disposing of the suit brought by the plaintiff against Star Fasteners, Inc., instituted in the U. S. District Court, Eastern District of New York, on the 7th day of February, 1949.” [116]

Answer: See appropriate agreement supplied in answer to interrogatory 36.

62.

Interrogatory No. 62: “Specify, in detail, the provisions of the settlement agreement or other document disposing of the suit brought by the plaintiff against Conmar Products Corporation, instituted in the U. S. District Court, District of New Jersey, on the 31st day of October, 1939.”

Answer: See appropriate agreement supplied in answer to interrogatory 36.

63.

Interrogatory No. 63: “Specify, in detail, the provisions of the settlement agreement or other document disposing of the suit brought by David Sil-

berman and Charm Slide Fastener Corporation against Syncro Slide Fastener Corp., instituted in the U. S. District Court, Southern District of New York, on the 26th day of April, 1948.”

Answer: This suit has not been disposed of.

64.

Interrogatory No. 64: “Specify, in detail, the provisions of the settlement agreement or other document disposing of the suit brought by David Silberman and Charm Slide Fastener Corporation against Swan Fastener Corporation, instituted in the U. S. District Court, Southern District of New York, on the 15th day of April, 1948.”

Answer: See answer to interrogatory 36. [117]

65.

Interrogatory No. 65: “Specify, in detail, the provisions of the settlement agreement or other document disposing of the suit brought by plaintiff against Joy Fastener Company, instituted in the U. S. District Court, Western District of Pennsylvania, on the 8th day of June, 1938.”

Answer: See appropriate agreement supplied in answer to interrogatory 36.

66.

Interrogatory No. 66: “Specify each of the above suits in which the settlement included payment to or for the benefit of defendant by the plaintiff of any monies whatsoever.”

Answer: Talon, Inc. v. Closurette Corporation of America. Also see agreement supplied in answer to interrogatory 36.

67.

Interrogatory No. 67: "List each of the above suits in which the terms of settlement required the licensing of the defendant or others by the plaintiff under any one or more of the patents here in suit.

(a) List each of the above suits in which the terms of settlement involved quota control of Slide Fasteners or slide fastener chain to be manufactured by the defendant therein subsequent to the settlement thereof."

Answer: The meaning of the term "required" is not understood. See answer to interrogatories 36 and 43. [118]

(a) See answers to interrogatories 36 and 43.

68.

Interrogatory No. 68: "State the name and address of each firm or individual manufacturing slide fasteners or slide fastener chain or components who were invited or urged to obtain licenses from plaintiff under any one or more of the patents here in suit for their manufacturing or other operations in connection with slide fasteners or slide fastener chain."

Answer: The meaning of the term "invited," as employed in interrogatory 68, is not understood. The parties to whom plaintiff expressed a willingness to grant such licenses include the defendants in all of the suits listed in the answer to interrogatory 30, as shown by the agreements supplied in answer to interrogatory 36. While licensing proposals were discussed generally with numerous other firms or individuals, including the present defendant, plain-

tiff has been unable to ascertain that any specific licensing proposal has been made by plaintiff to each such other firm or individual.

69.

Interrogatory No. 69: "State in detail the provisions of each of such license agreements offered to or *used* upon each of the said firms or individuals listed in interrogatory 68."

Answer: Covered in answer to interrogatory 68.

70.

Interrogatory No. 70: "State in detail the royalties and the basis of computation thereof in each of the license agreements referred to in interrogatory 68." [119]

Answer: See agreements supplied in answer to interrogatory 36.

71.

Interrogatory No. 71: "State in detail the restrictive provisions, if any, of each of the licensing agreements referred to in interrogatory 68, such as limitation of production, sliding scale royalties, etc."

Answer: See agreements supplied in answer to interrogatory 36.

72.

Interrogatory No. 72: "State the name of each firm or individual failing to accept such license agreements offered or *used* by Talon, Inc. or its predecessors, Hookless Fastener Corporation, or David Silberman or Charm Fastener, Inc."

Answer: Covered in answer to interrogatory 68.

Plaintiff does not possess the requested information as to David Silberman or Charm Fastener, Inc.

73.

Interrogatory No. 73: "List each of the firms or individuals to whom licenses under any one or more of the patents in suit were offered by plaintiff who failed to accept licenses and continued to manufacture slide fasteners, slide fastener chains or other components."

Answer: Covered in answer to interrogatory 68.

74.

Interrogatory No. 74: "List each of the firms or individuals referred to in interrogatory 73 who were not sued by Talon, Inc. for alleged infringement [120] of any one or more of the patents in suit."

Answer: See answer to interrogatory 68.

75.

Interrogatory No. 75: "State in detail, the considerations influencing Talon, Inc. or its predecessor, Hookless Fastener Corporation, to refrain from suing each of the firms or individuals listed in interrogatory 74."

Answer: None.

76.

Interrogatory No. 76: "State in detail, the criteria involved in decisions by Talon, Inc. or its predecessor, Hookless Fastener Corporation, in deciding whether or not to file suit against a firm or per-

son allegedly infringing any one or more of the patents here in suit."

Answer: The only criteria, as far as plaintiff can now determine, were:

1. Did a provable case of infringement exist?
2. Would the infringer accept a license on terms consistent with the terms of existing licenses granted by plaintiff?
3. Was the infringement sufficiently important to warrant the filing of a suit?

77.

Interrogatory No. 77: "State the exact title, home address and specify the duties and authority at the time of his employment by plaintiff of one Ward Robinson, now or formerly employed by plaintiff." [121]

Answer: Ward M. Robinson, 233 North Main Street, Meadville, Pennsylvania, Vice President-General Manager. His duties and authority are the usual ones designated to the General Manager and Vice President of a company.

78.

Interrogatory No. 78: "State the exact title, home address and specify the duties and authority at the time of his employment by plaintiff of one Lewis or Louis Walker, Jr., now or formerly employed by plaintiff."

Answer: Lewis Walker, 891 Grove Street, Meadville, Pennsylvania, President. His duties and authority are the usual ones attached to the office of President of a company.

79.

Interrogatory No. 79: "Name the official and his home address who was at the head of the Sales Department of Talon, Inc., in September, 1949."

Answer: Garfield R. MacDonald, State Road, Meadville, Pennsylvania.

80.

Interrogatory No. 80: "State the exact title, home address and specify the duties and authority at the time of his employment, by plaintiff, and as of this date of a Mr. Detweiler, now or formerly employed by plaintiff."

Answer: Charles F. Detweiler, 5447 Velvah Avenue, Encino, California, Manager of Los Angeles Office of Talon, Inc. His duties and authority are the usual ones attached to the position of an office manager. [122]

81.

Interrogatory No. 81: "State the exact title, home address and specify the duties and authority at the time of his employment by plaintiff of one W. B. Jaeger, now or formerly employed by plaintiff."

Answer: William B. Jager, 7057 Los Tilos Road, Hollywood 28, California, Western Regional Sales Manager of Talon, Inc. His duties and authority are the usual ones attached to the position of a sales manager in a limited territory.

82.

Interrogatory No. 82: "Was a meeting held in the Los Angeles office of Talon, Inc. during 1949 at

which representatives of plaintiff and representatives of other firms engaged in the slide fastener industry were present?"

Answer: Yes.

83.

Interrogatory No. 83: "If the answer to the preceding question is in the affirmative, state:

(a) What companies engaged in the slide fastener business were represented at said meeting.

(b) the names of the representatives of each company represented at said meeting, including the exact names of the representatives of plaintiff.

(c) at whose request such meeting was held.

(d) the purpose of said meeting.

(e) state whether any discussion was had at said meeting concerning the then current prices of the standard 7 inch skirt zipper. [123]

(f) specify the cost of manufacture at that time of the standard 7 inch skirt zippers manufactured (1) by Talon, Inc.; (2) by Wilzip Corporation.

(g) state whether a representative of plaintiff advised those present at said meeting that unless they maintained a price of .045 for standard 7 inch skirt zippers, plaintiff would take retaliatory measures by selling the Wilzip brand 7 inch zipper at less than .045 'just as plaintiff was doing in the East, to wit, selling said 7 inch zippers at .035, thereby forcing the smaller slide fastener manufacturers out of business.'

(h) state whether a representative of Talon, Inc. also stated that Talon, Inc. was going to introduce its Wilzip brand on the Pacific Coast and that un-

less the other local manufacturers maintained the price of .045 for 7 inch zippers, Talon would offer their Wilzip zippers at .0375 or .035 or even as low as .02."

Answer: (a) to (h), inclusive (Answers to these interrogatories to be submitted separately).

84.

Interrogatory No. 84: "State whether a representative of plaintiff at any time requested defendant to become a member of the Slide Fastener Association."

Answer: Not so far as plaintiff has been able to determine.

85.

Interrogatory No. 85: "If in answer to the preceding question it is stated that such request was made, give the name and home address of the representative of plaintiff making such request." [124]

Answer: No answer required.

86.

Interrogatory No. 86: "State whether plaintiff is a member of the Slide Fastener Association."

Answer: Plaintiff is a member of Slide Fastener Association, Inc., having its office at One Wall Street, New York 5, N. Y.

87.

Interrogatory No. 87: "State whether Wilzip Corporation is a member of the Slide Fastener Association."

Answer: The Wilzip organization to which interrogatory 87 appears to refer is not a separate

corporation but is merely a division of Talon, Inc. and is not itself a member of any such association.

88.

Interrogatory No. 88: "If the answer to either or both the preceding two questions is in the affirmative, state when plaintiff became a member of such association and when Wilzip Corporation became a member of said association."

Answer: Plaintiff became a member of the association at its inception, namely, May 2, 1950.

89.

Interrogatory No. 89: "State whether any of the officers or directors of plaintiff are also officers and directors of Wilzip Corporation." [125]

Answer: See answer to interrogatory 87.

90.

Interrogatory No. 90: "If the answer to the preceding question is in the affirmative, state the names and home addresses or directors of plaintiff who were or are also officers and directors of Wilzip Corporation."

Answer: No answer required.

91.

Interrogatory No. 91: "State the exact titles and duties of each of the aforesaid officers or directors in the respective companies."

Answer: No answer required.

92.

Interrogatory No. 92: "State the names and home addresses of any persons or firms holding licenses

from plaintiff or Wilzip Corporation under patents owned by plaintiff or Wilzip Corporation under patents owned by plaintiff or Wilzip Corporation who are members of the Slide Fastener Association.”

Answer: See attached list, Plaintiff’s Exhibit 7. Wilzip Division owns no patents.

93.

Interrogatory No. 93: “Was the purchase by plaintiff of Wilzip Corporation or its predecessor, Wilson Button Corporation of Cleveland, Ohio, influenced in any way by representations made to plaintiff or any of its officers or directors by a large button manufacturing concern [126] or an agent or an official thereof, that such button company intended to enter the slide fastener industry?”

Answer: No.

94.

Interrogatory No. 94: “If the answer to the above is in the affirmative,

(a) name the official or officer of the plaintiff to whom such representation was made and the agent or officer of the aforesaid button manufacturing company making such representation.

(b) state approximately the date upon which the aforesaid representation was made to the said officer of plaintiff.

(c) state what other considerations influenced the acquisition by plaintiff of Wilzip Corporation and/or its predecessor Wilson Button Corporation.”

Answer: No answer required.

95.

Interrogatory No. 95: "State whether plaintiff has made any use of the trade name and facilities of Wilzip Corporation."

Answer: The Wilson Division of Talon, Inc. has used and uses its trade name and facilities, and the Wilson Division is a part of Talon, Inc. To this extent, the trade name and facilities of the Wilson Division have been used by Talon, Inc.

96(a).

Interrogatory No. 96(a): "If the answer to the preceding question is in the affirmative,

(a) specify what use has been made by plaintiff of the trade name and facilities of Wilzip Corporation.

Answer: See answer to interrogatory 95. [127]

96(b)

Interrogatory No. 96(b): "(b) state whether the aforesaid use of the trade name and facilities of Wilzip has in any way affected the business of plaintiff and in what manner."

Answer: Interrogatory 96(b) is not understood when considered in the light of the facts stated in answer to interrogatory 95.

97.

Interrogatory No. 97: "Is the plaintiff aware of a widely published prospectus on the letterhead of one David Silberman of 10 MacDougal Alley, New York, New York, dated September 25, 1949 and

purporting to expound a plan to cure the ills in the slide fastener industry?"

Answer: Yes.

98.

Interrogatory No. 98: "If the answer to the preceding question is in the affirmative, was Talon, Inc. aware of the listing of its name on the aforesaid letterhead in the upper left-hand corner of the letterhead of the aforesaid prospectus under the heading of 'United States'?"

Answer: Plaintiff was not aware of the listing of its name on such letterhead until after the prospectus was mailed and sent to the trade. At that time, it then objected to such use of its name on its letterhead.

99.

Interrogatory No. 99: "Did Talon, Inc. endorse the plan or principles enunciated in the document referred to in interrogatory 97?" [128]

Answer: No.

100.

Interrogatory No. 100: "Please state the correct name, home address, title and authority at the time of his employment by plaintiff of one Frank Laynge or 'Lainge', now or formerly an employee of plaintiff."

Answer: Frank C. Layng, 347 Ben Avon Street, Meadville, Pennsylvania, Administrative Director. Assists President, General Manager, and Sales Manager in their duties.

101.

Interrogatory No. 101: "State the home address,

correct title and authority of the Ward Robinson referred to in the aforesaid prospectus at page 8, paragraph third.”

Answer: See answer to interrogatory 77.

102.

Interrogatory No. 102: “State whether plaintiff or any of its officers, directors or agents is familiar with the statement made by United States District Court Judge John M. Woolsey in ‘Findings of fact and conclusions of law as to defendant David Silberman’ in the suit brought by Conmar Products Corporation as plaintiff against Lamar Slide Fastener Corporation and David Silberman as defendants, Civil Action file No. 9-197 brought on June 12, 1940 in the United States District Court, Southern District of New York, at page 16, paragraph marked 27, to the effect that, ‘I also think Mr. Silberman has been conclusively established by the evidence here to be one of the most notable commercial pirates that has ever come before me.’” [129]

Answer: Yes.

103.

Interrogatory No. 103: “Was plaintiff’s acquiescence in the use of its name or prestige in the slide fastener business

(a) part of a plan to control the slide fastener business;

(b) part of a plan to control a part of the slide fastener business;

(c) If the answer to (a) or (b) is in the affirmative,

(1) Was the plan instigated by David Silberman?

(2) Was the plan instigated by plaintiff?

(3) Was the plan concerned either directly or indirectly with the slide fastener business outside the territorial limits of the U.S.A.?

(d) Is there any reason why the references at page 8, third paragraph of the prospectus referred to in interrogatory 97 to plaintiff's officials and/or agents Robinson, Layng or Laing should not be reasonably interpreted as endorsement by plaintiff of the plan proposed thereby.

(e) If the answer to (d) is in the affirmative, state the reason or reasons.

Answer: (a) to (e) Interrogatory 103 is not understood since it does not identify the use of plaintiff's name to which the interrogatory refers. If reference to the prospectus identified in interrogatories 97-99, plaintiff did not know of such use of its name until after the occurrence and did not acquiesce in such use of its name, but objected thereto as stated in answer to interrogatory 103. Similarly, no official or agent of plaintiff, to the best of plaintiff's knowledge, endorsed said prospectus or had any [130] part in its preparation or the formulation of any plans or objectives involved therein. Any contrary conclusions or interpretation is, therefore, contrary to the facts.

104.

Interrogatory No. 104: "Had plaintiff any contractual relations with David Silberman prior to the institution of this action?

(a) Express or implied, written or oral?

(b) By reason of plaintiff's acquisition of any patents or licenses from David Silberman?

(c) By reason of any prior dealing or course of dealings with Silberman?

(d) If the answer to any of (a), (b) or (c) is in the affirmative, give complete details of such contractual relations with David Silberman."

Answer: (a) to (d) Only what is involved in the agreements of Exhibit 1.

105.

Interrogatory No. 105: "Had plaintiff any contractual relations with David Silberman at the time of filing of this suit?

(a) Express or implied, written or oral?

(b) By reason of plaintiff's acquisition of any patents or licenses from David Silberman?

(c) By reason of any prior dealing or course of dealings with Silberman?

(d) If the answer to any of (a), (b) or (c) is in the affirmative, give complete details of such contractual relations with David Silverman."

Answer: Only as shown by agreements of Exhibit 1. [131]

106.

Interrogatory No. 106: "Does plaintiff have any present contractual relations with David Silberman?

(a) Express or implied, written or oral?

(b) By reason of plaintiff's acquisition of any patents or licenses from David Silberman?

(c) By reason of any prior dealing or course of dealings with Silberman?

(d) If the answer to any of (a), (b) or (c) is in the affirmative, give complete details of such contractual relations with David Silberman."

Answer: Only as shown by agreements of Exhibit 1.

Dated at Meadville, Pennsylvania, this 23rd day of April, 1952.

TALON, INC.,

/s/ By LEWIS WALKER,
President, Plaintiff. [132]

Duly Verified. [105]

[Endorsed]: Interrogatories Filed March 28, 1952. Answers Filed May 8, 1952.

[Title of District Court and Cause.]

PLAINTIFF'S ANSWER TO INTERROGATORY No. 83 IN INTERROGATORIES PROPOUNDED BY DEFENDANT AND SERVED MARCH 18, 1952

To the Defendant Union Slide Fastener, Inc., and to its attorneys, Fulwider & Mattingly, Robert W. Fulwider, Esq., and Solomon Kleinman, Esq.:

Interrogatory No. 83, (a) to (h) inclusive, is being answered separately herewith for the reason that Mr. William B. Jager subscribing to this answer is the person having direct knowledge concerning the events inquired into.

Interrogatory 83(a): "If the answer to the preceding question is in the affirmative, state:

"(a) What companies engaged in the slide fastener business [231] were represented at said meeting."

Answer: California Slide Fastener Company
Roxy Thread Company
Union Slide Fastener Company and Talon, Inc.

Interrogatory No. 83(b): "(b) the names of the representatives of each company represented at said meeting, including the exact names of the representatives of plaintiff."

Answer: California Slide Fastener Company by Mr. Eisenburg; Roxy Thread Company by Mr. Knapp; Union Slide Fastener Company by Mr. Philip Lipson; and Talon, Inc. by Messrs. William B. Jager and C. F. Detweiler.

Interrogatory No. 83(c): "(c) at whose request such meeting was held."

Answer: The meeting was held at the request of Mr. Knapp of California Slide Fastener Company, Roxy Thread Company and Union Slide Fastener Company relayed to Talon, Inc. through Apparel Manufacturing Supply Company.

Interrogatory No. 83(d): "(d) the purpose of said meeting."

Answer: The purpose of the meeting was to discuss market conditions.

Interrogatory No. 83(e): "(e) state whether any discussion was had at said meeting concerning

the then current prices of the standard 7 inch skirt zipper.”

Answer: Yes. [232]

Interrogatory No. 83(f): “(f) specify the cost of manufacture at that time of the standard 7 inch skirt zippers manufactured (1) by Talon; (2) by Wilzip Corporation.”

Answer: Affiant does not have the information sufficient to answer this interrogatory, and the interrogatory is immaterial, improper and irrelevant and seeks to pry into information which is a trade secret of plaintiff. At no time have Wilzip zippers, as manufactured by the Wilson Division of Talon, Inc., been shipped into this competitive market.

Interrogatory No. 83(g): “(g) state whether a representative of plaintiff advised those present at said meeting that unless they maintained a price of .045 for standard 7 inch skirt zippers, plaintiff would take retaliatory measures by selling the Wilzip brand 7 inch zipper at less than .045 ‘just as plaintiff was doing in the East, to wit, selling said 7 inch zippers at .035, thereby forcing the smaller slide fastener manufacturers out of business’.”

Answer: No.

Interrogatory No. 83(h): “(h) state whether a representative of Talon, Inc. also stated that Talon, Inc. was going to introduce its Wilzip brand on the Pacific Coast and that unless the other local manufacturers maintained the price of .045 for 7 inch zippers, Talon would offer their Wilzip zippers at .0375 or .035 or even as low as .02.”

Answer: No.

Dated at Los Angeles, California, this 5th day of May, 1952.

TALON, INC.,
/s/ By WILLIAM B. JAGER,
Western Regional Sales
Manager. [233]

Duly Verified.

Acknowledgment of Service Attached.

[Endorsed]: Filed May 8, 1952.

United States District Court, Southern District
of California, Central Division

No. 10,450-C—Civil

[Title of Cause.]

MINUTES OF THE COURT

Date: Nov. 24, 1952, at Los Angeles, Calif.

Present: The Hon. James M. Carter, District
Judge;

Deputy Clerk: L. B. Figg. Reporter: Samuel
Goldstein.

Counsel for Plaintiff: Chas. Lyon.

Counsel for Defendant: Robert W. Fulwider.

Proceedings:—For pretrial hearing.

On motion of Attorney Fulwider It Is Ordered
that Wm. J. Graham, an attorney of New York,
N. Y., is admitted to practice in this Court for the

limited purpose of appearing and participating in this action as co-counsel for the defendant.

Respective counsel and the Court confer on the issues and facts.

On motion of plaintiff, It Is Ordered that the complaint is dismissed as to all patents except Poux, 017, & Silberman, 793.

It Is Ordered that plaintiff's counsel present stipulation of facts and issues by Dec. 24, 1952.

EDMUND L. SMITH,
Clerk.

/s/ By L. B. FIGG,
Deputy Clerk. [235]

[Title of District Court and Cause.]

FURTHER INTERROGATORIES PRO-
POUNDED TO PLAINTIFF AND AN-
SWERS THERETO

Union Slide Fastener, Inc., the above-named defendant, herewith propounds further Interrogatories to plaintiff to be answered under oath within fifteen (15) days from the date of service hereof pursuant to Rule 33 of the Federal Rules of Civil Procedure. [236]

To the Defendant Union Slide Fastener, Inc., and to its attorneys, Fulwider, Mattingly & Babcock and Robert W. Fulwider, Solomon Kleinman and William J. Graham:

Plaintiff's answers to the interrogatories propounded by Defendant and served December 10, 1952 are as follows:

107.

Interrogatory No. 107: "With respect to U. S. Letters Patent No. 2,437,793 granted to David Silberman, state the following:

(a) The date upon which the first drawing of the alleged inventions described and claimed therein was made.

(b) The date upon which the first written description of the alleged inventions described and claimed therein was made. [247]

(c) The date upon which the alleged inventions described and claimed therein were first disclosed to another person, and the name and address of such person.

(d) The date of the first acts or act relating to conception of the alleged inventions described and claimed therein.

(e) The date of the actual reduction to practice of the alleged inventions described and claimed therein."

Answer: Plaintiff is not informed and does not know the answer to questions a, b, c and d.

Separately answering paragraph (e), actual reduction to practice of all inventions described and claimed in the claims in suit of Silberman patent 2,437,793 took place on or before February 29, 1944.

108.

Interrogatory No. 108: "With respect to U. S. Letters Patent No. 2,078,017 issued to Hookless Fastner Co., Inc., state the following:

(a) The date upon which the alleged inventions

claimed in claims numbered 9, 10, 11, 12, 13, 14, 15 and 17 were first disclosed to another person, and the name and address of such person.

(b) The date of the first act or acts relating to conception of the alleged inventions claimed in claims numbered 9, 10, 11, 12, 13, 14, 15 and 17.

(c) The date of the actual reduction to practice of the alleged inventions claimed in claims numbered 9, 10, 11, 12, 13, 14, 15 and 17."

Answer: Plaintiff is not informed and does not know the answer to these questions. Plaintiff now intends to rely upon the date of execution of the application for disclosure to others and for conception of the invention, [248] and upon the date of filing of the application for patent as the date of constructive reduction to practice.

109.

Interrogatory No. 109: "State the date on which plaintiff gave notice to defendant of the infringement of U. S. Letters Patent No. 2,437,793 issued to David Silberman."

Answer: October 17, 1949.

110.

Interrogatory No. 110: "State the manner in which plaintiff gave notice to the defendant of the alleged infringement of U. S. Letters Patent No. 2,437,793 issued to David Silberman."

Answer: By filing the complaint in this action. Plaintiff's predecessor in title had given defendant verbal notice of infringement of patent 2,437,793 at

least as early as August 1948 at the Hollywood-Roosevelt Hotel in Hollywood, California.

111.

Interrogatory No. 111: "If the notice referred to in the preceeding question was given by plaintiff to defendant in writing, attach a true copy of said writing."

Answer: See complaint filed in this Action.

112.

Interrogatory No. 112: "Attach copies of all agreements and assignments listed in Exhibit B to agreement dated April 18, 1949 by and between Talon, Inc. and David Silberman, which agreement is attached to plaintiff's answers to defendant's Interrogatories and is marked Exhibit 1 thereto." [249]

Answer: Copies of the requested papers are appended hereto as plaintiff's Exhibits 8 to 13 inclusive.

113.

Interrogatory No. 113: "State whether the original of the document dated August 22, 1949, a copy of which is attached to plaintiff's Answers dated April 23, 1952 to defendant's Interrogatories, and labeled Exhibit 2 thereto, bearing the signature of John T. Havekost, was prepared by or on behalf of plaintiff."

Answer: No.

114.

Interrogatory No. 114: "State whether the original of the document dated August 22, 1949, a copy

of which is attached to plaintiff's Answers dated April 23, 1952 to defendants' Interrogatories, and labeled Exhibit 2 thereto, bearing the signature of John T. Havekost, was recorded in the U. S. Patent Office, and the date and recording data."

Answer: Not to plaintiff's knowledge.

115.

Interrogatory No. 115: "State whether John T. Havekost of No. 33-30 149th Place, Flushing, Long Island, New York, has, at any time made any claim against defendant that he had any rights with respect to the inventions in slide fastener chain manufacturing machine, process and product or any part or feature thereof described and claimed in U. S. Letters Patent No. 2,437,793 granted to David Silberman on March 16, 1948, either before or after the issuance of said patent.

Answer: Don't know. If the question is directed to a claim against plaintiff, the answer is "No".

115A.

Interrogatory No. 115A: "If the answer to the preceding Interrogatory is in the affirmative, state:

- (a) The date of any such claim
- (b) How such claim was made
- (c) The substance of such claim
- (d) If such claim was made in writing, attach a photostatic copy thereof."

Answer: No answer required.

116.

Interrogatory No. 116: "State whether any person, firm or corporation other than said Havekost

has at any time made any claim against plaintiff with respect to the inventions in the slide fastener chain manufacturing machine, process and product, or any part or feature thereof described and claimed in U. S. Letters Patent No. 2,437,793 granted to David Silberman on the 16th day of March, 1948, either before or after the date of the issuance of said patent."

Answer: No.

117.

Interrogatory No. 117: "If the answer to the preceding question is in the affirmative state:

(a) The name and address of such person, firm or corporation

(b) Whether any such claim was made on the basis of an alleged assignment claimed to have been made by John T. Havekost to such person, firm or corporation of alleged rights of Havekost in or to inventions in a slide fastener chain manufacturing machine, process and product or any part or feature thereof alleged to have been the subject matter of an invention alleged to have been [251] made by Havekost."

Answer: No answer required.

118.

Interrogatory No. 118: "If any such claim as that referred to in Interrogatory No. 116 was made against plaintiff, state the approximate date on which such claim was made, the substance of such claim, and the manner in which such claim was disposed of by plaintiff. Attach photostatic copies of

any and all written documents relating to said claim or the disposition thereof."

Answer: No answer required.

119.

Interrogatory No. 119: "State whether David Silberman, the patentee of U. S. Letters Patent No. 2,437,793 has been requested at any time by plaintiff to furnish indemnity to plaintiff, with respect to any claims made by third persons that said Silberman was not the first and sole inventor of the inventions described and claimed in said Letters Patent."

Answer: No, except as provided in the agreement Exhibit 1 dated April 18, 1949 heretofore submitted to defendant.

120.

Interrogatory No. 120: "If the answer to the preceding Interrogatory is in the affirmative, state:

- (a) When such request was made
- (b) The nature of the indemnity requested
- (c) Whether or not such indemnity was furnished to plaintiff by said Silberman.
- (d) The name and address of the third person making such claims." [252]

Answer: No answer required.

121.

Interrogatory No. 121: "State whether plaintiff has in its possession or control an affidavit made by one John T. Havekost or John J. Havekost, purportedly dated September 8, 1948."

Answer: No.

121A.

Interrogatory No. 121A: "If the answer to the preceding Interrogatory is in the affirmative, attach a photostatic copy of said affidavit."

Answer: No answer required.

122.

Interrogatory No. 122: "State the name or names and title or titles of the officer or officers of the plaintiff in office on or about April 29, 1948 having authority to make decisions respecting the patent rights of the plaintiff, including but not limited to decisions with respect to the institution of suits for the infringement of plaintiff's patent rights."

Answer: Lewis Walker, President; Ward M. Robinson, Vice President and General Manager; R. E. Meech, Assistant Secretary and General Patent Counsel.

123.

Interrogatory No. 123: "List each agreement between the plaintiff and any other slide fastener manufacturer providing for a license from plaintiff to such manufacturer under any one or more of the following patents, other than the agreements attached to plaintiff's answers to defendant's Interrogatories, which [253] answers are dated April 23, 1952; and attach photostatic copies of all such agreements.

Patent Number	Patentee
1,903,659	Smith
2,026,413	Binns
2,078,016	Poux

Patent Number	Patentee
2,078,017	Poux
2,169,176	Poux
2,437,793	Silberman''

Answer: American Fastener Co., Cap-Tin Development Co., Ernst Slide Fastener Co., Hared Fastener Co., Joy Mfg. Co., Lamar Slide Fastener Co., Marvel Slide Fastener Co., Prentice Mfg. Co., Seltzer Fastener Co., Strauss Fasteners, Inc., Serval Slide Fasteners, Inc., United States Rubber Co.

These licenses are available for inspection by defendant at plaintiff's office in Meadville, Pennsylvania. Copies will be prepared for defendant if defendant pays for the same.

124.

Interrogatory No. 124: "State whether at or about the date of the agreement between plaintiff and Conmar Products Corporation dated June 7, 1951, plaintiff entered into any agreement with Conmar Products Corporation other than the agreement dated June 7, 1951, attached to plaintiff's answers to defendant's Interrogatories, which answers are dated April 23, 1952.

Answer: No. [254]

125.

Interrogatory No. 125: "If the answer to the preceding Interrogatory is in the affirmative, state:

(a) Whether any such agreement was oral or in writing

(b) If in writing, attach a photostatic copy of such agreement.

(c) If oral, state the substance of such agreement.”

Answer: No answer required.

126.

Interrogatory No. 126: “State what payment was made by plaintiff to or for the benefit of Closurette Corporation of America, in connection with the settlement of the suit brought by plaintiff against that corporation in the United States District Court for the Southern District of New York in December of 1948.”

Answer: Plaintiff paid defendant’s counsel fees of \$2,000.00.

127.

Interrogatory No. 127: “State the names of the firms or individuals with whom plaintiffs held general discussions with respect to licensing proposals under patents owned by plaintiff, as set forth in plaintiff’s answer to defendant’s Interrogatory No. 68.

Answer: Various concerns and individual in the industry whom plaintiff believed were then using the inventions of one or more of the listed patents. Plaintiff does not now recall the names of these concerns.

128.

Interrogatory No. 128: “State whether plaintiff’s purchase of U. S. Letters Patent No. 2,437,793 granted to David Silberman was influenced by the fact that said Silberman made known to plaintiff

his plan to issue licenses thereunder [255] to a number of manufacturers of slide fasteners.”

Answer: No.

129.

Interrogatory No. 129: “State whether plaintiff at any time requested David Silberman to obtain from John T. Havekost the original or a copy of the document dated August 22, 1949, copy of which is annexed to plaintiff’s answers to Defendant’s Interrogatories and marked Exhibit 2 thereto, which answers are dated April 23, 1952.

Answer: No.

130.

Interrogatory No. 130: “State whether at any time plaintiff has made any investigation of any claim made by said John T. Havekost to anyone that he had rights in and to the inventions or a part thereof described and claimed in U. S. Letters Patent No. 2,437,793.”

Answer: No.

131.

Interrogatory No. 131: “If the answer to the preceding Interrogatory is in the affirmative state:

(a) The nature of such investigation, and when it was made.

(b) Whether any determination was made by plaintiff that said David Silberman was not the owner of all of the rights intended to be assigned to plaintiff under agreement between plaintiff and said David Silberman dated April 18, 1949.

(c) The results of such investigation.”

Answer: No answer required. [256]

132.

Interrogatory No. 132: "State whether plaintiff made any payment directly or indirectly to said John T. Havekost or to anyone for or on behalf of said Havekost, in connection with the execution and delivery by said Havekost of the document dated August 22, 1949, copy of which is annexed to plaintiff's answers to defendant's Interrogatories and marked Exhibit 2.

Answer: No.

133.

Interrogatory No. 133: "If the answer to the preceding Interrogatory is in the affirmative, state the nature and amount of such payment and the date on which and the person to whom it was made."

Answer: No answer required.

134.

Interrogatory No. 134: "State whether plaintiff made any payment directly or indirectly to cover the expense of the preparation, execution and delivery of the document dated August 22, 1949, a copy of which is annexed to plaintiff's answers to defendant's Interrogatories and marked Exhibit 2."

Answer: No.

135.

Interrogatory No. 135: "If the answer to the preceding Interrogatory is in the affirmative, please state the nature and amount of such payments, when such payments were made and the person or persons to whom such payments were made."

Answer: No answer required.

136.

Interrogatory No. 136: "State whether plaintiff now or at any time in the past has owned stock in Dixie Fasteners, Inc., a corporation of the State of Tennessee.

Answer: No.

137.

Interrogatory No. 137: "If the answer to the preceding Interrogatory is in the affirmative, state the number of shares of said stock so held by plaintiff, the date of the acquisition thereof and what percentage of the total authorized capital stock of Dixie Fasteners, Inc. was represented by the shares of stock owned by plaintiff."

Answer: No answer required.

138.

Interrogatory No. 138: "List all of the United States Letters Patent under which plaintiff is licensed to practice or use the inventions described and claimed in such U. S. Letters Patent."

Answer: Defendant is referred to the many documents heretofore supplied to or made available to defendant for answer to this interrogatory in so far as pertinent or relevant to any issue in this action.

139.

Interrogatory No. 139: "State whether plaintiff, at any time, made any investigation of the alleged infringement of U. S. Letters Patent No. 2,437,793 granted to David Silberman or of the alleged use or attempted use of the inventions described and

claimed in the application which matured into said patent, by F. L. G. Co., a company or corporation in the State of New York." [258]

Answer: No.

140.

Interrogatory No. 140: "If the answer to the preceding Interrogatory is in the affirmative state:

- (a) When such investigation was made
- (b) The nature of such investigation
- (c) The results of such investigation."

Answer: No answer required.

141.

Interrogatory No. 141: "State whether any monies were paid by plaintiff directly or indirectly to or for or on behalf of any of the following named persons at any time, the amount paid and the time of such payment: Joseph Seltzer, formerly residing at 2785 Claflin Ave., Bronx, New York; Bertram Ross, one Bagdan, formerly an employee of Charm Slide Fastener Corporation of New York City and/or David Silberman, or F. L. G. Company."

Answer: No.

Dated at Meadville, Pennsylvania, this 11th day of February, 1953.

TALON, INC.

/s/ By LEWIS WALKER,
President.

Duly Verified. [260]

Affidavit of Service Attached. [261]

[Interrogatories dated Dec. 10, 1952. Signed by

Fulwider, Mattingly & Babcock by Robert M. Fulwider, attorneys for Defendant.]

[Endorsed]: Interrogatories Filed Dec. 11, 1952.
Answers Filed Feb. 19, 1953.

[Title of District Court and Cause.]

PRE-TRIAL STIPULATION AND ORDER

This cause having come on for hearing for a pre-trial conference and such conference having been held in the chambers of this Honorable Court on Monday, November 24, 1952, it is now, therefore, stipulated between the parties:

I.

That plaintiff Talon, Inc., is and was, as of the filing of the complaint herein, the owner of United States Letters Patent in suit No. 2,078,017 and No. 2,437,793.

II.

That the acts complained of herein have occurred in the City of Los Angeles, State of California within the Southern District of California, Central Division, and within the six years [311] next preceding the filing of the complaint herein.

III.

That defendant Union Slide Fastener, Inc. is a corporation organized and existing under and by virtue of the laws of the State of California, having its principal place of business at 1829 Blake Avenue in the City of Los Angeles, State of California,

within the Southern District of California, Central Division.

IV.

That, with respect to the issue of infringement, plaintiff will rely on only two of the patents in suit; namely, the Silberman Patent No. 2,437,793 and the Poux Patent No. 2,078,017; and that plaintiff waives the issue of infringement with respect to all other patents in suit.

V.

That, with respect to Silberman Patent No. 2,437,793, plaintiff will rely only on Claims 1 to 4, both inclusive, 13, and Claims 32 to 40, both inclusive; and that with respect to Poux Patent No. 2,078,017, plaintiff will rely only on Claims 1 to 4, both inclusive, and 16 and 17.

VI.

That printed copies of United States Letters Patent as issued by the United States Patent Office and photostatic copies of foreign patents as issued by the United States Patent Office can be used with the same force and effect as originals and subject to the right of any party to show to the contrary that the dates of filing and issuance, sealing and delivery printed upon said copies of said patents shall be taken as true and that translations of foreign patents as issued by the United States Patent Office may be used as true and correct translations of said foreign patents.

VII.

That file histories of Silberman Patent No. 2,-

437,793 [312] and Poux Patent No. 2,078,017 may be introduced in evidence without further foundation in lieu of certified copies of the file wrappers of such patents.

VIII.

That defendant may introduce into evidence without further foundation originals of letters received from Evans & McCoy, Bulkley Building, Cleveland 15, Ohio, and copies of letters sent to that firm by defendant, between May 17, 1947, and January 20, 1948.

IX.

That the documents heretofore produced by plaintiff and constituting Exhibits 1 through 7 to Plaintiff's Answers to Interrogatories Propounded by Defendant and served March 18, 1952, may be introduced in evidence without further foundation.

X.

That the photographs taken by plaintiff during the course of an inspection of defendant's premises on the 6th day of September, 1952, truly and accurately depict defendant's machines as they stood on such date subject to any explanation which either party may wish to give as to lighting, angles at which pictures were taken, etc. and the same may be received in evidence without further foundation.

XI.

That, if in the possession or control of plaintiff, plaintiff will produce an affidavit alleged to have been made by John T. Havekost, in which the as-

sections are made that said Havekost was the first inventor of the matter disclosed and claimed in Silberman Patent No. 2,437,793; and that plaintiff will produce copies of every License Agreement relating to Silberman Patent No. 2,437,793 and Poux Patent No. 2,078,017, other than those annexed to Plaintiff's Answers to Defendant's Interrogatories so far as in the possession or control of plaintiff. [313]

XII.

List of Issues

The sole issues raised on behalf of plaintiff are the validity and infringement of Silberman Patent No. 2,437,793, particularly Claims 1 to 4, both inclusive, 13 and 32 to 40, both inclusive; and Poux Patent No. 2,078,017, particularly Claims 1 to 4, both inclusive, and Claims 16 and 17.

The issues raised on behalf of defendant are:

(a) Unclean Hands—This defense is based upon the assertion by defendant that David Silberman was not the true inventor of the entire subject matter of Silberman Patent No. 2,437,793; and that this patent was secured by deceit and fraud.

(b) Misuse of Patents—This defense is based upon allegations that plaintiff has used its patent position to intimidate, harass, and discourage competitors, to block and impede the development by others of the manufacture of slide fasteners and the constituent parts of machines and methods used in making slide fasteners, and has imposed upon competitors unfair and illegal licenses and agreements.

(c) Estoppel—This defense is based upon alleged admissions by an officer of the plaintiff, after inspection of defendant's plant, that defendant did not infringe any patents then owned by plaintiff, which admissions were made at a time when plaintiff knew that defendant was contemplating the expansion of defendant's plant, and that following the making of such admissions defendant incurred additional expenses in connection with the expansion of its plant.

Included in this defense is the allegation that David Silberman, the patentee of Patent No. 2,437,793, agreed with defendant, for a due and valid consideration, to refrain from asserting any rights against defendant under his said United States Patent. [314]

(d) Invalidity of the Patent Relied Upon by Plaintiff.

(e) That the Patentees of the Patents Relied Upon by Plaintiff Are Not the Original or First Inventors of the Material Disclosed and Claimed in Said Patents.

(f) That certain of the claims of Poux Patent No. 2,078,017 were first inserted in the then pending application more than two years after the public, including defendant, had acquired the right to the subject matter of such claims.

(g) Non-infringement.

In addition to its defenses, defendant has interposed a Counterclaim alleging that plaintiff has engaged in a continuous series of activities designed to restrain competition in, and to monopolize and

to attempt to monopolize the slide fastener industry, the cumulative effect of which has been to constitute a combination and conspiracy to restrain and monopolize and to attempt to monopolize trade and commerce among the several states and with foreign countries, and to lessen competition with plaintiff, all in violation of the Sherman Anti-trust Act and the Clayton Act.

Plaintiff denies defendant's allegations as set forth in the Answer and Counterclaim and as herein summarized.

LYON & LYON,

/s/ By CHARLES G. LYON,
Attorneys for Plaintiff.

FULWIDER, MATTINGLY &
BABCOCK,

/s/ By ROBERT M. FULWIDER,
Attorneys for Defendant. [315]

Approved and so Ordered.

/s/ JAMES M. CARTER,
United States District Court.

[Endorsed]: Filed March 30, 1953.

[Title of District Court and Cause.]

PLAINTIFF'S EXHIBITS

No. 1—In Evidence 3/1/55. Poux Patent in Suit, No. 2,078,017.

No. 2—In Evidence 3/1/55. Metal Strip.

No. 3—In Evidence 3/1/55. Silberman Patent in Suit, No. 2,437,793.

No. 4—In Evidence 3/1/55. Cardboard Chart of Claim 40 of Patent '793 Illustrating Structure.

No. 5—In Evidence 3/1/55. Machine for Producing Zippers (in custody of plfs. counsel).

No. 6—In Evidence 3/2/55. Deposition of Philip Lipson taken 3/18/52 and filed herein 7/18/52.

No. 6-1—In Evidence 3/2/55. Blueprint (Exh. 1 to Lipson Depos.).

No. 6-2—In Evidence 3/2/55. Blueprint (Exh. 2 to Lipson Depos.).

No. 6-3—In Evidence 3/2/55. Print (Exh. 3 to Lipson Depos.).

No. 6-4—In Evidence 3/2/55. Drawing (Exh. 4 to Lipson Depos.).

No. 6-5—In Evidence 3/2/55. Drawing (Exh. 5 to Lipson Depos.).

No. 6-6—In Evidence 3/2/55. Drawing (Exh. 6 to Lipson Depos.).

No. 6-7—In Evidence 3/2/55. Drawing (Exh. 7 to Lipson Depos.).

No. 6-8—In Evidence 3/2/55. Drawing (Exh. 8 to Lipson Depos.).

No. 6-9—In Evidence 3/2/55. Drawing (Exh. 9 to Lipson Depos.).

No. 6-10—In Evidence 3/2/55. Drawing (Exh. 10 to Lipson Depos.).

No. 6-11—In Evidence 3/2/55. Drawing (Exh. 11 to Lipson Depos.).

No. 6-12—In Evidence 3/2/55. Drawing (Exh. 12 to Lipson Depos.).

No. 6-13-A to 6-13-L Incl.—In Evidence 3/2/55.

Photographs (Exhs. 13-A to 13-L, Inc. to Lipson Depos.).

No. 6-14—In Evidence 3/2/55. Print (Exh. 14 to Lipson Depos.).

No. 6-15—In Evidence 3/2/55. Sketch (Exh. 15 to Lipson Depos.).

No. 7—In Evidence 3/3/55. Agreement, 7/16/45, Between Talon & Cap-Tin & Silberman (Exhibit to Plfs. Ans. to Defts. Interrogs.) (Pgs. 57 to 65 incl.).

No. 8—In Evidence 3/3/55. Agreement, 4/18/49, between Silberman & Talon (Exhibit to Pltfs. Ans. to Defts. Interrogs.) (Pgs. 43 to 56, incl.).

No. 9—In Evidence 3/3/55. Agreement, 12/16/46, between Silberman, Charm Slide & Lightning Fasteners, Ltd.

No. 10—In Evidence 3/3/55. Agreement 12/31/47, between Silberman & Companhia Brasileira De Metais.

No. 11—In Evidence 3/3/55. Agreement, 1/1/40, between Talon & Conmar Products (Exhibit to Plfs. Ans. to Interrogs., Pgs. 79 to 89, incl.). [316]

No. 12—In Evidence 3/3/55. Agreement, 6/7/51, between Talon & Conmar Products (Exhibit to Plfs. Ans. to Defts. Interrogs., Pgs. 90 to 94, incl.). (Filed 5/8/52.)

No. 13—In Evidence 3/3/55. Sundback Patent, No. 1,467,015 (same document as Defts. M).

No. 14—In Evidence 3/4/55. Report of McKee to Meech, 4/29/48 (Exh. 3 to Plfs. Ans. to Defts. Interrogs., Filed 5/8/52, Pg. 69—two sheets).

No. 5-A—In Evidence 3/8/55. Metal Strip, with pointed tip, taken from Plfs. Exh. 5.

No. 5-B—In Evidence 3/9/55. Metal Closing Jaw, taken from Plfs. Exh. 5.

No. 5-C—In Evidence 3/9/55. Metal Closing Jaw Housing, taken from Plfs. Exh. 5.

No. 15—For Identification 3/10/55. In Evidence 3/11/55. Copy Letter, 8/12/55, to Union Slide Fastener Co., Inc. (name of sender not indicated).

No. 5-D—In Evidence 3/10/55. Two-Piece Punch, taken from Exh. 5.

No. 16—In Evidence 3/11/55. Copy of Findings of Fact & Concls. of Law, Case of Conmar Mfg. Co. v. Lamar Slide Fastener, U. S. Dist. Court, So. Dist. of N. Y.

No. 17—In Evidence 3/11/55. Agreement, 4/7/44, between Cap-Tin Development Co. & Queen Mfg. Co. (pages 15 to 21, incl., of Plfs. Ans. to Defts. Interrogs. filed 2/19/53).

No. 18—For Identification 3/11/55. In Evidence 3/11/55. Letter, 8/11/48, to Sigmund Loew & Union Slide (name of sender not indicated).

No. 19—For Identification 3/11/55. In Evidence 3/11/55. Chart re Poux Patent, '017, Claim 17.

No. 20—For Identification 3/11/55. In Evidence 3/11/55. Chart re Silberman Patent, Claim 37.

No. 21—For Identification 3/11/55. In Evidence 3/11/55. Chart re Silberman Patent, Claim 40.

No. 22—In Evidence 3/15/55. Ulrich Patent, No. 2,221,740. [317]

DEFENDANT'S EXHIBITS

No. A—For Identification 3/3/55. Zipper Chain.

No. B—For Identification 3/3/55. Zipper Chain.

No. C—For Identification 3/3/55. Zipper Chain.

No. D—For Identification 3/3/55. In Evidence 3/11/55. Die Punch.

No. E—In Evidence 3/3/55. Sundback Patent, No. 1,331,884.

No. F—In Evidence 3/3/55. Sundback Patent, No. 1,947,956.

No. G—In Evidence 3/3/55. Smith Patent, No. 1,533,352.

No. H—In Evidence 3/3/55. Johnson Patent, No. 1,731,667.

No. I—In Evidence 3/4/55. Hommel Patent, No. 1,659,266.

No. J—In Evidence 3/4/55. Binns Patent, No. 2,026,413.

No. K—In Evidence 3/4/55. Taberlet Patent, No. 2,294,253.

No. L—In Evidence 3/4/55. Wintritz Patent, No. 2,201,068.

No. M—In Evidence 3/4/55. Sundback Patent, No. 1,467,015 (same document as Plfs. 13).

No. N—In Evidence 3/4/55. Murphy Patent, No. 1,664,880.

No. O—In Evidence 3/4/55. Loew Patent, No. 2,444,706.

No. P-1—In Evidence 3/4/55. Letter, 5/17/47, McCoy to Union Slide Fastener Co.

No. P-2—In Evidence 3/4/55. Letter, 6/16/47, Union Slide to Evans & McCoy.

No. P-3—In Evidence 3/4/55. Letter, 9/15/47, McCoy to Loew.

No. P-4—In Evidence 3/4/55. Letter, 9/23/47, Union Slide to Evans & McCoy.

No. P-5—In Evidence 3/4/55. Letter, 9/26/47, McCoy to Lipson.

No. P-6—In Evidence 3/4/55. Letter, 11/12/47, McCoy to Union Slide.

No. P-7—In Evidence 3/4/55. Letter, 11/20/47, Union Slide to Evans & McCoy.

No. P-8—In Evidence 3/4/55. Letter, 6/22/48, Union Slide to McKee (Defts. Exh. 1-H to Depos. of Loew).

No. P-9—In Evidence 3/4/55. Letter, 6/25/48, McKee to Sigmund Loew (Defts. Exh. 1-I to Depos. of Loew).

No. P-10—In Evidence 3/4/55. Letter, 1/20/48, McCoy to Union Slide.

No. Q—In Evidence 3/4/55. Deposition of Sigmund Loew, taken 11/25/52 and filed herein 3/4/55.

No. R—For Identification 3/4/55. In Evidence 3/4/55. Assignment, 8/22/49, Havekost to Silberman (Exhibit 2 to Plfs. Ans. to Interrogs., pg. 68.) (Filed 5/8/52.)

No. S—In Evidence 3/4/55. List of Patent Suits Filed by Talon (Exh. 4 to Plfs. Ans. to Defts. Interrogs., pages 70, 71 & 72). (Filed 5/8/52.)

No. T—In Evidence 3/4/55. Two releases & a Stipulation, being pages 73 to 76 of Plfs. Ans. to Defts. Interrogs. as part of Exh. 5, filed 5/8/52.

No. U—In Evidence 3/4/55. Agreement, 11/21/49, between Talon, Star & Ridgewood (pages 119 to 132 of Exh. 5 to Plfs. Ans. to Defts. Interrogs). (Filed 5/8/52.) [318]

No. V—In Evidence 3/4/55. Agreement, 6/12/47, between Talon, Slidelock & Max Lange (pages 105 to 115, incl., of Exhibit 5 to Plfs. Ans. to Defts. Interrogs., filed 5/8/52.

No. W—In Evidence 3/4/55. Agreement, 5/10/50, between Talon & Waldes Koh-I-Noor (pages 133 to 137, incl., of Exhibit 5 to Plfs. Ans. to Defts. Interrogs.). (Filed 5/8/52.)

No. X—In Evidence 3/8/55. Agreement, 10/6/38, between Talon & Joy Mfg. Co. (pages 95 to 104, incl., of Exh. 5 to Plfs. Ans. to Defts. Interrogs.) (Filed 5/8/52.)

No. Y—In Evidence 3/8/55. Stipulation & Final Decree in Case of Talon v. Carney Fasteners, Inc. (pages 116 to 118, incl., of Exh. 5 to Plfs. Ans. to Defts. Interrogs.). (Filed 5/8/52.)

No. Z—In Evidence 3/8/55. List of Holders of Licenses from Plaintiff (page 139, Exh. 7 to Plfs. Ans. to Defts' Interrogs.). (Filed 5/8/52.)

No. AA—In Evidence 3/8/55. Agreement, 6/19/45, between Prentice Mfg. Co., Cap-Tin Development Corp. & Silberman (pages 32 to 48, incl., of Exh. 10 to Plfs. Ans. to Defts. Interrogs.). (Filed 2/19/53.)

No. AB—In Evidence 3/8/55. Agreement, May, 1946, between Charm Slide Fastener, Silberman, Slidelock & Lange (pages 49 to 55, incl., of Exh. 11 to Plfs. Ans. to Defts. Interrogs.). (Filed 2/19/53.)

No. AC—In Evidence 3/8/55. Agreement, 5/22/45, between Talon & Universal Slide Fastener Co.

No. AD—In Evidence 3/8/55. Agreement, 8/9/45, between Talon & Strauss Fasteners, Inc.

No. AE—In Evidence 3/8/55. Agreement, 5/7/48, between Talon & Marvel Slide Fastener Corp.

No. AF—In Evidence 3/8/55. Agreement, 10/29/46, between Talon & Hared Fastener Co.

No. AG—In Evidence 3/8/55. Agreement, 6/1/45, between Talon & Rex Slide Fastener Co., et al.

No. AG-1—In Evidence 3/10/55. Agreement, 9/2/47, between Talon & Rex Slide, et al.

No. AH—In Evidence 3/8/55. Agreement, 6/1/34, Hookless Fastener Co. & American Fastener Co., et al.

No. AH-1—In Evidence 3/8/55. Letter, 6/9/50, American Fastener Co. to Talon.

No. AH-2—In Evidence 3/8/55. Letter Agreement, 7/7/38, between Talon, American Fastener Co. & Sterling Novelty Mfg. Co.

No. AI—In Evidence 3/8/55. Deposition of Wilbur B. Jager, taken 11/25/52, filed herein 12/8/52.

No. AJ—In Evidence 3/8/55. Deposition of C. F. Detweiler, taken 11/25/52. Filed herein 1/8/53.

No. AK—In Evidence 3/8/55. Deposition of Robert Eisenberg, taken 11/25/52 (copy).

No. AL—In Evidence 3/8/55. Deposition of Isadore O. Napp, taken 11/25/52. Filed herein 12/10/52.

No. AM—For Identification 3/8/55. In Evidence 3/11/55. Deposition of John T. Havekost, taken 11/27/54. Filed herein 1/17/55.

No. AM-1—For Identification 3/8/55. In Evidence 3/11/55. Exh. 1 to Depos. of John T. Havekost—Assignment, 12/8/48, Havekost to Max H. Lange.

No. AM-2—For Identification 3/8/55. In Evidence 3/11/55. Exh. 2 to Depos. of John T. Havekost—an Affidavit of John Havekost, dated Dec., 1948.

No. AM-3—For Identification 3/8/55. In Evidence 3/11/55. Silberman Patent No. 2,437,793 (copy)—(Exh. 3 to Depos. Havekost.)

No. AN—In Evidence 3/8/55. Deposition of William Wray, taken 2/25/55. Filed herein 3/1/55.

No. AO—In Evidence 3/8/55. Piece of Metal described as an ejector.

No. AP—In Evidence 3/8/55. Ram block & punch holder block, metal (returned to custody of Deft.)

No. AQ—In Evidence 3/8/55. Sketch by witness Lipson.

No. AR—In Evidence 3/9/55. Part taken from defendant's machine (element closing jaw, with lip)

No. AS—For Identification 3/9/55. In Evidence 3/9/55. Metal punch from machine of California Slide Fastener Co.

No. AT—For Identification 3/9/55. In Evidence 3/9/55. Metal punch from defendant's machine.

No. AU—For Identification 3/9/55. In Evidence 3/9/55. Drawing by witness Lipson illustrating strip progression of Silberman.

No. AV—For Identification 3/9/55. In Evidence 3/9/55. Drawing by witness Lipson illustrating strip progression of Defendant's machine.

No. AW—For Identification 3/9/55. In Evidence 3/9/55. Drawing by witness Lipson illustrating closing jaw of Silberman machine in action.

No. AX—For Identification 3/9/55. In Evidence 3/9/55. Zipper Chain.

No. AY—For Identification 3/9/55. In Evidence 3/9/55. Zipper Chain.

No. AZ—In Evidence 3/9/55. Defendant's machine (accused) in custody of Deft.

No. AZ-1—In Evidence 3/9/55. Vacuum container portion of Exh. AZ. [320]

No. BA—In Evidence 3/9/55. Defendant's "Top-Stop" machine (in custody of Deft.).

No. BB—In Evidence 3/9/55. A Talon Zipper #3.

No. BC—In Evidence 3/9/55. A Talon Zipper #5.

No. BD—In Evidence 3/9/55. Plastic Zipper.

No. BE—For Identification 3/10/55. In Evidence 3/11/55. Letter, 2/4/52, Loew to Lipson.

No. BF—In Evidence 3/10/55. Sundback Patent, No. 1,434,857.

No. BG—In Evidence 3/10/55. Wintriss Patent, No. 2,336,662.

No. BH—In Evidence 3/10/55. Ulrich Patent, No. 2,370,380.

No. BI—In Evidence 3/10/55. Poux Patent, No. 2,169,176.

No. BJ—In Evidence 3/10/55. Behrens Patent, No. 2,267,783.

No. BK—In Evidence 3/10/55. File History of Poux Patent, '017.

No. BL—In Evidence 3/10/55. File History of Silberman Patent, '793.

No. BM—For Identification 3/15/55. In Evi-

dence 3/15/55. Agreement, 9/27/47, between Union Slide, Loew & Lipson.

No. BN—For Identification 3/15/55. Schedule of Defendant's Damages.

No. BO—For Identification 3/15/55. In Evidence 3/15/55. Statement of Services Rendered, 2/28/55. William J. Graham to Union Slide.

No. BP—For Identification 3/15/55. In Evidence 3/15/55. Statement of Services Rendered, 3/9/55, William J. Graham to Union Slide.

No. BQ—In Evidence 3/15/55. Statement, 3/8/55, Biltmore Hotel to William J. Graham.

No. BR—In Evidence 11/14/55. Deposition of Isadore Napp, taken.

No. BS—In Evidence 11/14/55. Deposition of William Hepworth, taken.

No. BT—For Identification 8/2/56. In Evidence 8/2/56. Legat Patent, No. 2,116,726.

No. BU—For Identification 8/2/56. In Evidence 8/2/56. Ulrich Patent, No. 2,302,075.

No. BV—For Identification 8/2/56. In Evidence 8/2/56. Ulrich Patent, No. 2,338,884.

No. BW—For Identification 8/2/56. In Evidence 8/2/56. Prentice Patent, No. 2,116,712.

No. BX—For Identification 8/2/56. Thayer Patent, No. 322,997; objected to by Plf.—Ct. sustained obj.

No. BY—For Identification 8/2/56. In Evidence 8/2/56. Atty. Graham's Time Record.

No. BZ—For Identification 8/3/56. Affidavit Schmeiling.

No. CA—For Identification 8/3/56. Affidavit Bean.

No. CB—For Identification 8/3/56. Affidavit
Fulwider. [321]

[Title of District Court and Cause.]

AMENDMENT TO REPLY TO DEFENDANT'S
COUNTER-CLAIM

XIV.

Further answering said counter-claim and as a further and separate complete defense thereto plaintiff alleges that any and all claims, demands or causes of action attempted to be set forth in said counter-claim or in any paragraph or subparagraph thereto, as well as any parts or portions of such claims, demands or causes of action which accrued:

(a) more than one year prior to the date of filing of said counter-claim are barred by the provision of subdivision 1 of section 340 of the Code of Civil Procedure of California;

(b) more than three years prior to the filing of the counter-claim in this action are barred by the provisions [322] of subdivision 1 of section 338 of the Code of Civil Procedure of California;

(c) more than four years prior to the filing of the counter-claim in this action are barred by the provisions of section 343 of the Code of Civil Procedure of California.

March 8, 1955.

LYON & LYON,
/s/ By LEONARD S. LYON.

[Endorsed]: Filed March 8, 1955.

[Title of District Court and Cause.]

AMENDMENT TO DEFENDANT'S AMENDED
ANSWER AND COUNTERCLAIM

13. That defendant be awarded attorney's fees and expenses of litigation, including preparation therefor as a part of the general damages prayed or as special damages.

March 15, 1955.

ALLAN D. MOCKABEE,
WILLIAM J. GRAHAM,
/s/ By ALLAN D. MOCKABEE,
Attorneys for Defendant. [324]

[Endorsed]: Filed March 15, 1955.

[Title of District Court and Cause.]

MEMORANDUM TO COUNSEL

I.

Validity and Infringement

The case has been ably briefed. The court considers the "Charts and Analysis" filed by Lipson on November 25, 1955, as a brief only and permits it to remain in file. Contrary to the contentions of Talon's able attorneys, the court finds Lipson's brief to be very helpful. He is a skilled mechanic, has had long experience in, and has made real contributions to the zipper art in the improvements designed for defendant's machines and has a wide knowledge and understanding of the art in the

zipper field. The court has found him truthful, frank and conservative in his testimony and accurate in his analysis in his brief.

The field concerning the zipper art is a crowded one. The basic and generic patent is not Poux '017. Probably Sundback 1,331,884 made the greatest contribution. Most present manufacturers lean on Sundback '884. Naegle and others had taught how to make zipper units which were subsequently placed on the tape in another operation. Sundback '884 made great steps forward toward the solution of [325] the problem of doing the whole job in one operation. The court generally agrees with Lipson's analysis pp 27-49 of his brief.

Other contributions were:

Johnson	1,731,667
Binns	2,026,413
Smith	1,533,352
Legat	2,116,726
Ulrich	2,221,740, 2,302,075, 2,370,380 and 2,338,884.

Poux '017 came at a time in the art when machines were making zipper units and other machines were used to attach them to the tape. Sundback '884 had already invented a machine which performed both functions.

Poux '017 did not solve a problem. It merely stated the problem, and what the method or a machine based thereon would do. This is not sufficient, *Halliburton Co. v. Walker* [1946] 329 U.S. 1, at 9. Poux '017 says, "I have a method to make and at-

tach zippers by one machine." The illustrated machine omitted various parts, but any mechanic could have supplied them from the mechanical arts. But the machine would not be operative.¹

For example, before the age of the automobile, carriages and engines were both known. It would not have been invention for a person to say, "I have a method to combine an engine and a carriage and have an auto-mobile carriage," unless his method would work. He would be only stating a problem or a result. Poux stated he proposed to sever the unit as it was "united with the tape." Sundback '884 did not show this particular matter but other prior art did.

But under the Poux '017 method, a machine so [326] constructed would not work or operate. Thirteen years later Silberman '793 claimed he used the Poux method. Meanwhile much had been added to the art.

To our mind the supposed Poux method means nothing. It proposes to solve a problem on paper, stating the method will constitute the making of

¹ The machine shown therein would not be workable,

(a) the indentation below the rod would keep the rod from moving forward;

(b) the cutting device (23) will not work horizontally;

(c) the anvil (25) opposite (23) is fashioned to constitute a shearing result and is not positioned so as to hold the end pieces (26) while the legs are being fastened to the strip. The spreader (27) will create a problem if the cutter (23) is moved into a vertical position.

zipper units and attaching them to a tape by the use of a single machine. Anyone could suppose such a method, but if the means illustrated to perform the method, would not work, there is no invention. This is not contra to the rule that if the method is good, various means can be used to accomplish it. *Cochrane v. Deener*, 94 U.S. 780, states the method must be useful. *Expanded Metal Co. v. Bradford*, 214 U.S. 366, holds a method patent must show how "the method of the patent can be put in operation." If the method works, varying some of the means will not avoid infringement. But the method must work or there is not sufficient disclosure to permit the granting of a patent. Lipson's "dog story" is most appropriate.

No wonder Talon never brought Poux '017 to a court determination as to validity and invention! It would not have held up.

Silberman '793 is invalid in view of prior art in a crowded field. All elements of Silberman '793 are shown in the prior art. No new result was accomplished. It is an aggregation and not a combination.

Silberman '793 and Ex. 5, the plaintiff's machine, are not the same machine;² nor is Silberman '793

² Ex. 5, has features not found in the patent:—

- (a) Spring bars on top
- (b) The lip on the closing jaw
- (c) The ejector die to prevent zippers bunching up, Ex. 5a
- (d) No "V" shaped ram
- (e) Spacing device between fasteners
- (f) Vacuum chip clearer.

and the accused machine the same.³ Silberman '793 is not the machine described in Poux '017.

Certain sequence of events, called attention to by Lipson, are important. Prior to July 16, 1945, Meech of Talon claimed to have examined a '793 machine and to have [327] seen it operate at high speeds.⁴ Three years later, on June 3, 1948, Talon paid \$10,000 for an option to buy '793 from Silberman and later paid an additional \$65,000.

³ Lipson (and defendant) claims license under the Loew patent, Ex. O. This is not a defense in view of Loew's dates.

As we read the Loew patent, the only thing new is the elimination of the means for threading the metal strip through intermittently. In Loew, the device of knarled wheels is eliminated and a means provided with a sliding section, which is part of the lower die block and a reciprocating finger which engages an embryo cavity. The cutting device on Loew results in pointed apexes on the strip, with the result that a square shouldered zipper results, Ex. AX, instead of a round shouldered zipper as in Ex. AY from the California Slide Co., which used so-called "Silberman" machines. Plaintiff's machines also result in round shouldered zippers.

Even though defendant cannot rely on the Loew patent as a defense, the defendant's machines are turning out a different kind of zipper. Defendant's machines do not infringe Silberman '793, since a different result is obtained. The square shouldered zipper from defendant's machines serves a useful purpose in ease and efficiency in operation.

⁴ The contention is that the Silberman machine was the first high speed machine. But the machine would not operate at high speed without the improvements shown in note 2 which are not in the Silberman patent, '793. The "V" shaped ram in Silberman '793 would prevent sustained high speed operation because of over heating.

The option was taken about ten weeks after McKee in April 1948 had examined defendant's machines. The notes made by McKee on his return (Ex. 14) are revealing as showing his interest in defendant's operations, and yet they contained no information that he observed any infringing activities. Instead he had made oral statements to the contrary, to Loew in Lipson's hearing. The court believes that the improvements made by Lipson and observed by McKee, caused Talon to decide to buy Silberman '793.

A mere inspection of plaintiff's own charts, as to Silberman '793, Exs. 20 and 21, will show that every element in Silberman was present in the prior art. However, even the charts are misleading, in that Talon's expert witness admitted that the charts were not strictly correct. As the court recalls as to Ex. 21, there was an admission that the column involving Sundback '884 should have read "yes" instead of "no" on items 6 and 7.

In Talon's chart prepared on Poux (Ex. 19) there was a clear admission by Talon's expert witness that the column showing Johnson '667 should have had the word "yes" on items 1, 2 and 3 instead of "no." With this addition of course, plaintiff's own Ex. 19 would show that everything in Poux was present in the prior art.

The file wrappers on Poux '017 (Ex. BK) and Silberman '793 (Ex. BL) are revealing. They show references to various of the prior art. For example in the Poux file wrapper, are shown references by the examiner to Johnson '667, Sundback '857,

Hommel '266, Lamb '990 and Smith '352. The Smith reference is interesting in that Talon has contended that since Smith '352 involved paper box fasteners, it was [328] in a different field of art. It will be noted however, that the examiner picked it up and cited it. Murphy '480, Sundback '956, Prentice '712, are also cited. In Ex. BL, the file wrapper of Silberman '793, references were Barrons '783, Prentice '712, Legat '726. In fact the references in excess of thirty show how crowded was the art.

In both file wrappers, the arguments advanced by the applicant to show patentability over the references, in many cases have little or no relationship to the contentions made at the trial by the plaintiffs in urging validity of the claims.

We hold, (1) Poux '107 is invalid, (a) for lack of invention over the prior art and (b) because it does not teach a workable method; (2) Silberman '793 is (a) invalid in view of the prior art and (b) is an aggregation from the prior art and not a combination bringing about a new result; (3) That Talon's proof fails on the issue if Silberman's '793 ever operated; (4) That the accused machine is not essentially '793. That Talon's Ex. 5 is not essentially '793; (5) That defendant has not infringed '017 or '793.

II.

Dealings with McKee and Silberman License — Estoppel

The court has found Lipson a creditable witness. He frankly made admissions even where they hurt.

The court credits Lipson and not Loew or other witnesses, in matters where they conflict.

The Silberman patent was issued on March 16, 1948. That spring, in Europe, Lipson heard about it. It was assigned to Talon on April 19, 1949. Silberman was Talon's predecessor in interest.

Sec. 261 U.S.C. 35, speaks of "assignment, grant [329] or conveyance." It does not refer to license. The purchaser of a patent takes it subject to existing licenses. Walker on Patents, Sec. 381.

Consent to use is a license, DeForrest Radio Tel. Co. v. United States, [1927] 273 U. S. 236, 241. The case has been extensively cited. It is still the law.

Silberman '793

In August 1948, Silberman said in substance to Lipson, "Sell your machines anywhere in the world except Europe and I'll not sue you over the patent." [R 806-807]

Defendant had tied up \$25,000 on 10 machines for Europe [R 807]. Following the talk with Silberman defendant did not sell or ship machines to Europe [R 811]. This was because of Silberman's statement [R 812-814] though defendant had fairly good prospects for sales on a European market, [R 814]. No machines were therefore ever sold in Europe by defendant. [R 824]

The court considers there was sufficient evidence to constitute a permission to use or a license, DeForrest, *supra*; and further that there was reliance on, and change of position because of Silberman's statements, to defendant's prejudice and hence estoppel.

Equitable estoppel is defined in *Dickerson v. Colgrove*, 100 U. S. 578, 580, 25 L. Ed. 618:

“* * * The vital principle, is, that he who, by his language or conduct, leads another to do what he would not otherwise have done, shall not subject such person to loss or injury by disappointing the expectations upon which he acted. Such a change of position is sternly forbidden * * *” [330]

For the application of the doctrine in a patent case see *Lukens Steel Co. v. American Locomotive Co.*, [2 Cir. 1952] 197 F. 2d 939 at 940-41.

Poux '017

McKee, an official of Talon, came to Los Angeles on about April 15, 1948. Talon then held Poux '017 but not Silberman '793. It took the option to buy Silberman '793 in June 1948. However, it secured a license on July 16, 1945 for the life of the patent to be issued. [Ex. 7].

Lipson stated McKee told Loew in Lipson's hearing that McKee found no infringement of Talon patents. [R 835]. McKee's report on his return [Ex. 14] confirms, in that it has no indication that he told Loew or Lipson that defendant infringed. Defendant relied on that statement and continued work on the machines it was manufacturing. It expanded facilities [R 837] and Lipson himself would have otherwise sued Loew for fraud and the return of his investment. Later Lipson purchased Loew's interest on the strength of McKee's statement. [R 838].

Although the court cross examined Lipson [R

838 et seq.] and Lipson made frank replies that he might otherwise had expanded the business, still there is sufficient to show reliance and estoppel. Defendant, for instance, did not then employ patent counsel, in reliance on McKee's statement. [R 840] And the witness said categorically that he would not have expanded or continued to operate until he was sure they didn't infringe if it had not been for McKee's statement [R 840-841].

Many of the questions and answers contained "he", "we", "I". But Lipson had an interest in the business at that time and later in further reliance, bought out Loew. We find Lipson was speaking for the defendant corporation as well as himself. [331]

The Exhibits P-1 to P-10 inclusive, show a series of correspondence between attorneys for plaintiff Talon, and the defendant Union Slide, concerning alleged infringement. They start with May 17, 1947 and end January 20, 1948, when defendant was advised that McKee, an official of Talon, would come to the west coast within the next few months.

McKee came about April 15, 1948, and on his return prepared a memorandum of his California visit to the defendant's plant, Ex. 14, dated April 29, 1948. Although in the memorandum McKee describes plaintiff's operations for the benefit of officials of his company, there is no intimation that he found infringement.

Talon claims that Ex. 15, dated August 12, 1948, being a letter by Burkitt, Silberman's attorney, constitutes notice of infringement. It is a one line

letter and only encloses a copy of a patent, apparently Silberman '793. Ex. 18, a letter from Burkitt to defendant charging infringement, was written in behalf of "my clients David Silberman and Charm Slide Fastener Corp.," and dated August 11, 1948.

Moreover, the court is convinced and finds that both letters were written prior to Silberman's visit and prior to the conversation of Silberman with Loew and Lipson which occurred about August 15th of 1948. It was the letter, Ex. 18, which lead to the conversations.

Talon's statement that a license issued without consideration may be revoked at will, *Frank Associates Inc. v. Columbia Narrow Fabric Co.*, 33 F. Supp. 279, 283, states the law as far as it goes. But once reliance and change of position occurs, then equitable estoppel intervenes and the license or promise cannot be withdrawn. [332]

We think there is ample evidence of reliance and change of position and that plaintiff is estopped to contend infringement of Poux '017 or Silberman '793.

Plaintiff took the patent in 1949 subject to the license and subject to the defense of estoppel for any patent infringement. *Keystone Type Foundry Co. v. Fastpress Co.* [2 Cir.] 272 Fed. 242.

III.

Silberman Was Not the Sole Inventor of '793
and Therefore '793 Is Invalid

The court reserves the right inherent in all per-

sons, including judges, to change its mind, *McGrath v. Kristensen* [1950] 340 U. S. 162, 177-178. After further study it finds Silberman was not the sole inventor of '793 but that it was, at least in part, the work of Havacost. Havacost was a skilled mechanic. (Ex. AM, pp 2-13). Silberman gave little instruction. (p. 13). Havacost designed a high speed zipper machine while employed by Zenith Corporation. Silberman was the principal shareholder.

Since Silberman claimed he was the sole inventor of '793, and since we find he was not, the patent is invalid.

IV.

Unclean Hands and the Antitrust Laws

We have heretofore found Talon's patents, Poux '017 and Silberman '793, as to the claims involved herein, invalid and not infringed.

Alternatively we find that even if the claims of such patents are valid, and that defendant does infringe, still relief should be denied Talon because it has unclean hands. [333]

The possession of a patent gives no blanket exemption from the operation of the Antitrust laws. "It is equally well settled that the possession of a valid patent or patents does not give the patentee any exemption from the provisions of the Sherman Act beyond the limits of the patent monopoly," (citing cases) *United States vs. Line Materials Co.* [1948] 333 U. S. 287, 308, and "The monopoly granted by the patent laws is a statutory exception to this freedom for competition and consistently has been construed as limited to the patent grant.

Ethyl Gasoline Corp. v. United States, 309 U. S. 436, 452, 455; United States v. Univis Lens Co., 316 U. S. 241; Hartford-Empire Co. v. United States, 323 U. S. 386. It is not the monopoly of the patent that is invalid. It is the improper use of that monopoly * * *", Line Materials case, *supra*, p. 310.

Control of prices by patent pools has been condemned. United States v. U. S. Gypsum [1948] 333 U. S. 364, held that conspiracies to control prices and distribution are beyond any patent privilege regardless of the motives of the parties (p. 391-393) and that the use of patents to stabilize prices on unpatented items is improper. (p. 399).

Although, "where a conspiracy to restrain trade or an effort to monopolize is not involved, a patentee may license another to make and vend the patented device with a provision that the licensee's sale price, shall be fixed by the patentee," (quoting from U. S. v. Line Material Co. [1948] 333 U. S. 287, and its explanation of U. S. v. General Electric Co. 272 U. S. 476), nevertheless two or more patentees may not legally combine their valid patents and control sales prices for their benefit, U. S. v. Line Materials Co. *supra*. U. S. v. U. S. Gypsum Co. [1948] 333 U. S. 364. [334]

"* * * Even in Standard Oil Co. v. United States, 283 U. S. 163, where an arrangement by which the patentees pooled their oil cracking patents and divided among themselves royalties from licensees fixed by the pooling contracts was upheld, the theory was reiterated that a price limitation for the product was unlawful per se. PP 170, 173, 175.

Of course, if a purpose or plan to monopolize or restrain trade is found, the arrangement is unlawful. P. 174." United States v. Line Material Co., 333 U. S. 287 at 313 [emphasis supplied].

Using patents to secure royalties on, or to compel sales of unpatented materials has been condemned. *Transparent-Wrap Machine Corp. vs. Stokes & Smith Co. [1947] 329 U. S. 637*, held that the inclusion of improvement patents in an exclusive licensing contract was not per se illegal and unenforceable, but the court also said, "** * ** In a long and consistent line of cases the Court has held that an owner of a patent may not condition a license so as to tie to the use of the patent the use of other materials, processes or devices which lie outside of the monopoly of the patent. (citing cases) ** * **" (p. 640). [emphasis supplied]

In *Carbice Corp. v. Amer. Patents Corp. [1931] 283 U. S. 27 at 31*, the court said that the patentee "may not exact as the condition of a license that unpatented materials used in connection with the invention shall be purchased only from the licensor; and if it does so, relief against one who supplies such unpatented materials will be denied. ** * ** The limited monopoly to make, use and vend an article may not be 'expanded by limitations as to materials and supplies necessary to the operation of it. *Motion Picture Patents Co. v. Universal Film Mfg. Co., 243 U. S. 502, 515.* Compare *United Shoe Machinery Corp. v. United States, 258 U. S. 451, 462; [335] United States vs. General Electric Co., 272 U. S. 476, 492 * * **". To same effect *Leitch Mfg. Co. v. Barber Co. [1938]*

When a licensee's contract provides that royalties shall be paid on unpatented articles, "such an arrangement in purpose and effort increased the area of the patent monopoly and is invalid." *United States vs. U. S. Gypsum Co.* [1948] 333 U. S. 364, 397.

The fact that the control exercised over an unpatented article is not in itself a restraint of trade or a monopoly is not decisive of the question. In the *Transparent-Wrap Machine Co.* case, *supra*, the court said, "Though control of the unpatented article or device falls short of a prohibited restraint of trade or monopoly, it will not be sanctioned. *Morton Salt Co. v. Suppiger Co.*, *supra*. For it is the tendency in that direction which condemns the practice and which, if approved by a court either through enjoining infringement or enforcing the covenant, would receive a powerful impetus. *Id.* * * *" (p. 641) "Thus where the use of unpatented materials is tied to the use of a patent, a court will not lend its aid to enforce the agreement though control of the unpatented article falls short of a prohibited restraint of trade or monopoly. *Morton Salt Co. v. Suppiger Co.*, *supra* * * *" (p. 645).

See, generally *Standard Sanitary Mfg. Co. v. United States* [1912] 226 U. S. 20; *United Shoe Mach. Co. v. United States* [1922] 258 U. S. 451; *Lord v. Radio Corporation of America* [D. C. Del. 1928] 24 F. 2d 565, 566-67; *aff.* 28 F. 2d 25, *cert. den.* 278 U. S. 648, *decree* 35 F. 2d 962, *aff.* 47 F. 2d 606.

The Antitrust laws may be used as a sword or a shield. The attempt of the defendant to invoke them here, as a sword, fails because of lack of proof of damage and [336] causation. We believe however, if properly pleaded, they are here available as a defense, *Morton Salt Co. v. Suppiger Co.* [1942] 314 U. S. 488. The court generally agrees with defendants' analysis on pages 15 to 35a of counsel's brief, in connection with the violation of the Antitrust laws. The defendants' defense is that there has been a misuse of patents in violation of the Antitrust laws sufficient to constitute a defense under the doctrine of unclean hands. We believe the defense has been made out.

There is no doubt as to the part of the market controlled, or attempted to be controlled, by Talon prior to World War II. Talon then had 60% of the market and its biggest competitor was Conmar with 25% of Talon's 60%, i.e. 15%. Under the Conmar contract the patent pool affected approximately 75% of the market. Following the war, Talon's percentage of production was, according to its witnesses, down to about 30% of the market but it was still the largest zipper maker in the country and still held a dominant position in the market. Its influence was further increased by the patent pool resulting from the various license agreements. But as shown by the cases above, actual control is not necessary to the defense of Antitrust violation or unclean hands.

Talon's activities must not be scrutinized piecemeal, but as a whole. The American agreement

(Ex. AH) was clearly illegal. It antedated Poux '017, and was received in evidence solely on the question of intent. Many of its provisions carried over beyond the issuance of Poux. The conference in Los Angeles, many years later, where representatives of Talon attempted to maintain price control, is further evidence of this continuing [337] intent.

The licensing contracts demonstrate the **quota** system used by Talon. A certain amount of production might be royalty free but if a competitor got too big the royalty rate increased.

In ordinary business, royalties would continue on at either the same rate on the increased production, or if there was any variation would ordinarily decrease as production increased. However, in various of the licensing contracts executed by Talon, after the allowance of a certain royalty free quota there was an increased rate of royalty as production increased. It is axiomatic that such a reduction could have had no effect but to operate to curtail production and the plaintiff's contention that the royalty free quotas were never exceeded is subject to the inference that one reason could well have been that it was unprofitable to produce beyond the quota and pay the increasing royalty rates, and that licensees did not exceed free quota limits for that reason.

Many of the agreements settled a suit filed by Talon. None of the suits were ever allowed to go to contested decree to determine the validity of Talon's patents. Generally Talon granted the right

to use its patents and took a corresponding right to use the other parties' patents. But the other party usually paid royalties, over a certain free production, to Talon. Talon never paid royalties on other patents. Usually the other party who became entangled with Talon was obligated to pay royalties on all production whether under Talon patents or not.

Conmar Contract #1, Ex. 11, (Sec. 4, p. 83) tied Conmar's quota to 25% of Talon's production, with variations. Conmar was the number one competitor, next in size to Talon.

In Ex. 12, Conmar Contract #2 executed after the [338] commencement of this action and the assertion of Antitrust defenses, Talon revised the contract and backed away from the features of Conmar Contract #1.

In Ex. U, Starr Contract Sec. 2, it was agreed that the action by Talon "is to be continued as long as the court permits;" if Starr breached the settlement agreement, or the court would not permit further continuances, Starr agreed to entry of judgment that the Talon patents were good and infringed and that the court should make "no other findings."

Ex. 7, the first Silberman contract of July 16, 1945, is particularly offensive. It continued, until cancelled by Ex. 8, the 2nd Silberman contract of 4/18/49. In paragraph 5(a) Cap Tin (Silberman) agreed to pay 10% royalty on all slide fasteners "made by the use of any machine or processes" covered by the patents in excess of 12,000,000 dou-

ble yards. Then followed this sentence: "Cap Tin agrees that all quantities of fasteners or fastener chain which it may acquire from others and resell shall be included along with fasteners or fastener chain made by machines licensed herein to Cap Tin, in computation of the royalties agreed to be paid * * *" This clearly tied patented to unpatented articles in violation of the Antitrust law.

It is true that Sec. 5(b), following states: "The royalty contemplated in this paragraph 5(b) hereof for the use of one or more of the inventions embodied in the aforesaid patents of Talon * * * is intended to be a percentage of the value of the product resulting from the use of machines and processes covered by said patents, namely, the fastener chain." However, this section expressly refers to paragraph 5(b). The offensive language above quoted appears in Sec. 5(a). Even if the wording in 5(b) had made express reference to 5(a) which it did not, still there would be no justification for such a provision and it would constitute a misuse of [339] patents. This is particularly important, because Ex. 7, the agreement in question referred both to Poux '017 and the Silberman application which matured into Silberman '793.

Typical of Talon activities, was its commencement of the present action, after McKee an official of Talon, had found no infringement, and without any further inspection or investigation. (R 837).

From the evidence, and an inspection of the licensing contracts in evidence, we find that Talon

intended and attempted to monopolize the zipper market, misused its patents, and has unclean hands. It set a quota system which would discourage competition, and keep its competitors within limits. This, standing alone might not be violative of the Antitrust laws, but most of the licensing agreements provided that Talon obtained the use of its competitors' patents. True, this was done in many cases on the basis of the contention that the competitor was infringing Talon's patents. In view of the different methods demonstrated for making zippers and used by various of the licensees, for instance Conmar, it is difficult to believe all the patents of the licensees infringed. Thus, Talon had advantage of all the patents of its competitors and in most cases required the competitor to pay royalties, in excess of free quotas, upon all production whether made with the Talon machines or the competitor's machines, and without any nice distinction as to whether the production by the competitor's machines infringed Talon's patents.

We think there is ample evidence to bear out our findings.

It is clear a patentee, acting alone, may choose his licensees and fix territories, and even prices, *Brownell v. Ketcham Wire & Mfg. Co.* [9 Cir.] 211 F. 2d 121, and cases above cited. But what is done by a patentee is a question of [340] fact and its legality is a question of law. We think that under the cases above cited and either under Sec. 1 of the Sherman Act, condemning contracts in restraint of trade, or under Sec. 2 of the Sherman

Act, condemning monopolization or attempt to monopolize any part of trade or commerce, that there has been a violation of the Act. Here the attempt was to control the high speed zipper industry. The attempt need not concern the whole market, a substantial part is sufficient. Nor need the attempt be successful. No specific intent in the criminal sense is required. *United States v. Griffith*, 334 U. S. 100. And this is true because "attempt" is a word connoting a deliberate act. An attempt may not be made inadvertently. If made, it shows intent. This court finds both the necessary intent and such attempt. We think we are consistent with *Cutter Laboratories Inc. v. Lyophile Cryochem Corp.* [9 Cir. 1949] 179 F. 2d 80, where no such intent was found by the trial court. An excellent summary concerning patent misuse appears at p. 92. We also believe that *Kobe Inc. v. Dempsey Pump Co.* [10 Cir. 1952] 198 F. 2d 416, cert. den. 344 U. S. 837 has many features similar in our case and is, at least, persuasive.

There is no doubt as to the interstate commerce involved. As a matter of law the court concludes that there was a substantial impact on the interstate market. There was thus public injury. Since the Sherman Act is here being used as a shield, it is not necessary that the defendant also show the damage to himself. *Morton Salt Co. v. Suppiger*, *supra*.

Talon relies on *United States v. E. I. DuPont De Nemours & Co.* [D. C. Del. 1953] 118 F. Supp. 41, and particularly the language appearing on

p. 224 to 226, where the grant back of patents and quota licensing of Sylvania is discussed. [341]

The decision, in which the district court dismissed the complaint, was affirmed by the Supreme Court in *United States v. E. I. DuPont De Nemours & Co.*, June 11, 1956, U. S.

The District court had said, p. 226, "There is no decision which I can find after long research which holds a license agreement such as the one involved here, violates the Sherman Act."

The matter was not discussed by the Supreme Court except that in the recital of facts the court pointed out (p. 7) that Sylvania was limited "on moisture proof sales by the terms of the license to 20% of the combined sales of the two companies of that type by the payment of a prohibitive royalty on the excess. * * * The limiting clause was dropped on January 1, 1945, and Sylvania was acquired in 1946 by the American Viscose Corp., with assets of over \$200,000,000.00." The Supreme Court decision is therefore not helpful.

However, Judge Leahy in the District court case said:

"[23] As patentee duPont had right to fix royalties at graduated scales on amount of Sylvania's production. *United States v. General Electric Co.*, 272 U. S. 476, 47 S. Ct. 192, 71 L. Ed. 362; *General Talking Pictures Corp. v. Western Electric Co.*, 305 U. S. 124, 59 S. Ct. 116, 83 L. Ed. 81. No limitation of production by Sylvania under its own patents existed or is charged * * *". (p. 226) [emphasis supplied]

In the case at bar the contracts imposing restriction on production by means of the royalty provisions fixed the amount of royalty through production on the basis of all products manufactured, whether under Talon patents or patents [342] belonging to the various licensees, and in at least once instance required royalties to be paid on all zippers purchased by the licensees and resold. Our facts go far beyond the license on agreements in the DuPont case.

Judge Leahy also said, p. 226, "Cases on which plaintiff relies deal with circumstances of patents under circumstances where the cross licensing parties sought to create a position of market control beyond that which either of them was entitled to through the exercise of its own patents." This statement comes closer to stating the problem in our case. The theory of patent grants is that the patentee discloses his invention to the public. He gets in return, a 17 year exclusive right to use the patent. Thereafter the public generally may use the teachings of the patent. The patent grant is in itself a monopoly. Public policy demands it not be extended or misused.

V.

Amendment to Conform to Proof; Reopening Case

At the trial there were considered and evidence introduced of (1) license, (2) waiver, (3) laches, (4) estoppel, (5) unclean hands, (6) misuse of patents, (7) violation of antitrust laws, (8) statute of limitations, etc.

Certain of these matters are contained in the answer, some in the counter claim and some are not pleaded.

There has been a failure of proof to show damage to plaintiff and particularly causal connection between purported damage and the unlawful acts by plaintiff.

However, an amendment should be permitted to defendant to plead such of the above matters as the court indicates as valid defenses, as defenses in the answer. The case is reopened for that purpose. Amended pleadings to be filed [343] within 20 days.

The following patents are not in evidence, except as referred to in the file wrapper of Silberman '793 (Ex. BL). The case will be reopened and copies of such patents will be received in evidence;—

Legat—2,116,726.

Ulrich—2,302,075 and 2,338,884.

Prentice—2,116,712.

VI.

Attorney's Fees

The court has found that Poux '017 and Silberman '793 were invalid, and not infringed. Talon's conduct convinces the court that Talon considered their validity questionable and did not heretofore permit their adjudication; and finds that notwithstanding the license by Silberman, and the assurance given by Silberman and McKee this patent infringement suit was brought by Talon; that after McKee's visit no further investigation as to in-

fringement was made; that in any event Talon's hands are unclean; that the action was brought in bad faith and without reasonable belief in the validity of the patents; that accordingly there is sufficient showing of harassment, lack of good faith, and misconduct on Talon's part to justify an award of *attorneys to* defendant. *Park-In Theatres v. Perkins* [9 Cir. 1951] 190 F. 2d 137; *Day Brite v. Ruby Lighting* [9 Cir. 1951] 191 F. 521; *Shingle Product Patents v. Gleason* [9 Cir. 1954] 211 F. 2d 437.

The case will be reopened for the taking of additional evidence on the issue of a reasonable attorney's fee to defendant. [344]

[Endorsed]: Filed July 17, 1956.

United States District Court, Southern District
of California, Central Division

No. 10450-C Civil

[Title of Cause.]

MINUTES OF THE COURT

Date: July 17, 1956. At: Los Angeles, Calif.

Calendar of: The Honorable James M. Carter,
District Judge.

L. B. Figg, Deputy Clerk. Reporter: None.
Appearances of Counsel: None.

Proceedings: The Court having heretofore entered a decision herein subject to the subsequent

filing of a written memorandum giving its reasoning upon which the decision is based,

The Court now hands down said written Memorandum to Counsel, which is filed this date; and, pursuant thereto,

It Is Ordered as follows:

1. The defendant may file an amended answer to conform to proof, within twenty days;

2. The case is reopened for further trial, for the purpose of receiving into evidence certain patents (referred to on page 20 of the Court's Memorandum);

3. The case is reopened for further trial, for the purpose of taking further evidence to determine the reasonable attorneys' fees to be allowed the defendant; and

4. The case is hereby set for further trial on the issues referred to above at 9:00 A.M., Thursday, August 2, 1956, at Los Angeles, Calif.

JOHN A. CHILDRESS,
Clerk,

By L. B. FIGG,
Deputy Clerk. [347]

[Title of District Court and Cause.]

MEMO TO COUNSEL RE: ATTORNEYS FEES

The Court has taken into consideration the nature and complexity of the case; the length of the trial; the depositions taken; the experience, standing and

eminence of counsel; the quality of skill demonstrated; the importance of the case to the plaintiff and defendant; the risk of the client and the responsibility of counsel; the time fairly and properly expended in preparation out of court; time in court; and the results accomplished.

The Court has not considered any contingent basis of a fee; but has considered there was some duplication of effort due to change of attorneys.

The Court believes that the case was worthy of the activities of two attorneys and notes that at least two attorneys on a side usually participate in an unusual or difficult case.

The amount paid or agreed to be paid by the client is not decisive. It affords no basis at all in a contingent fee case. An attorney might charge a client a nominal fee due to friendship for or hardship of the client. That fee does not evidence the reasonable value of his services. Or an attorney might charge to and collect from a client an unconscionable fee. It likewise would not evidence the reasonable value of the services.

The Court finds and concludes on the basis of the factors properly to be considered that the reasonable value of the services of attorneys for the defendant is \$20,000. [348]

The defense of violation of the antitrust laws was part of the defense of unclean hands. It rested largely on Talon's contracts, the suits brought and dismissed or settled without permitting an adjudication of the Poux or Silberman patents, and Talon's attempt, in Los Angeles, to

control prices. This was in time and effort a minor part of the case and discovery proceedings produced most of the documents. Research on anti-trust problems is difficult, but again, this would represent a minor portion of the time fairly and properly expended on the case.

The time spent by defendant's counsel on the counterclaim is not, as contended by Talon, an important factor. The same material was used as a shield and as a sword. It was nearly all pertinent to the defense to the action, even though the counterclaim failed.

Very little time was spent on proof of proximate cause, private injury or damage. The purported evidence on damage was supplied briefly from a report by defendant's auditor.

We consider the antitrust problem the only substantial issue if an appeal is taken. To provide for the contingency (which we consider remote), that on appeal the reviewing Court should find no violation of the antitrust laws and be confronted with an apportionment of fees, and a remand for the purposes of such fixing of fees without regard to the attorneys' services on the antitrust violation, the Court will find that, excluding the services regarding antitrust law violations, the reasonable value of attorneys fees for defendant is \$18,500.

[Endorsed]: Filed Aug. 13, 1956.

[Title of District Court and Cause.]

AMENDED ANSWER

Comes now the Defendant, Union Slide Fastener, Inc., and with regard to the Complaint filed herein alleges and denies as follows:

I.

Answering Paragraph I, Defendant is without knowledge as to any of the allegations therein set forth, and therefore denies the same and leaves the Plaintiff to its proof.

II.

Answering Paragraph II, Defendant admits it is a corporation organized under the laws of the State of California.

III.

Answering Paragraph III, Defendant admits that the jurisdiction is based upon the Patent Laws of the United States, but denies each and every other allegation thereof.

IV.

Answering Paragraph IV, Defendant admits that United States [350] Letters Patent No. 1,903,659 were issued to one Hookless Fastener Company, but defendant is without knowledge as to any of the other allegations of this paragraph and therefore denies the same and leaves the Plaintiff to its proof.

V.

Answering Paragraph V, Defendant admits that

the United States Letters Patent No. 2,026,413, were issued to one Hookless Fastener Company, but defendant is without knowledge as to any of the other allegations of this Paragraph and therefore denies the same and leaves the Plaintiff to its proof.

VI.

Answering Paragraph VI, Defendant admits that the United States Letters Patent No. 2,078,016, were issued to one Hookless Fastener Company, but Defendant is without knowledge as to any of the other allegations of this Paragraph and therefore denies the same and leaves the Plaintiff to its proof.

VII.

Answering Paragraph VII, Defendant admits that the United States Letters Patent No. 2,078,017, were issued to one Hookless Fastener Company, but defendant is without knowledge as to any of the other allegations of this Paragraph and therefore denies the same and leaves the Plaintiff to its proof.

VIII.

Answering Paragraph VIII, Defendant admits that the United States Letters Patent No. 2,169,176, were issued to Plaintiff, but Defendant is without knowledge as to any of the other allegations of this Paragraph and therefore denies the same and leaves the Plaintiff to its proof.

IX.

Answering Paragraph IX, Defendant admits

that the United States Letters Patent No. 2,437,793, were issued to one David Silberman, but Defendant is without knowledge as to any of the [351] other allegations of this Paragraph and therefore denies the same and leaves the Plaintiff to its proof.

X.

Denies the allegations contained in Paragraph X.

XI.

Answering Paragraph XI, Defendant denies each and every allegation thereof.

Further Answering Said Complaint Herein and for Separate, Alternate and Further Defenses:

(a) Defendant alleges that the pretended Letters Patent Nos. 2,437,793, 2,169,176, 2,078,017, 2,078,016, 2,026,413 and 1,903,659 were not granted by the Commissioner of Patents within the authority granted to him under due power of law. That said pretended Letters Patent No. 2,437,793, were irregularly granted without proper due consideration of the application for said pretended Letters Patent.

(b) That Poux Patent No. 2,078,017, is invalid for lack of utility and invention, is anticipated by the prior art, and does not teach a patentable method but merely states a problem and a desired result, and the means illustrated to perform the result is not an operative machine.

(c) That defendant has not infringed any of said Letters Patent or the claims thereof.

(d) That the patentees named in each of said Letters Patent, and particularly David Silberman, the patentee named in pretended Letters Patent No. 2,437,793, are not the original or first inventors of that which is alleged to be obtained in each of said pretended Letters Patent, or any material or substantial part thereof, but on the contrary, prior to the respective dates of the alleged invention or discovery disclosed or claimed in each of said Letters Patent, the alleged invention or discovery described and claimed in said pretended Letters Patent, and all material and substantial part thereof, had been described or published or contained in each of the following [352] Letters Patent, or the applications therefor, and have been published, described and contained in other printed publications. The numbers and patentees of such Letters Patent, and the dates thereof, and the publications and dates and publishers thereof are not all available, and defendant prays leave to add the same by amendment to this Answer or otherwise.

(e) Defendant further alleges upon information and belief that prior to any supposed information or discovery by the patentees named in each of said Letters Patent, that which is alleged to be obtained by said pretended Letters Patent, and particularly that which is described and claimed therein, and the material and substantial parts thereof in the United States, had been invented, sold and used by, or known to each of the persons whose names, places of residences and inventions are as follows:

1. Each and every patentee mentioned in the preceding paragraph resides at the places indicated in the respective patents and the places stated as the places of residences of the patentees.

2. And others whose names and addresses this Defendant has not yet learned and for which this Defendant is diligently searching and prays leave to add to this Answer.

(f) That the patent to Silberman No. 2,437,793, in addition to being invalid as anticipated by the prior art, is an aggregation of elements from the prior art and not a patentable combination producing a new or improved result.

(g) That in view of the state of the art at and before the respective alleged invention or inventions of each of the said pretended Letters Patent, or attempted to be defined in claims or any claims of each of said pretended Letters Patent, said claims or any of them cannot now be so interpreted as to bring within their purview as an infringement thereof any device manufactured, used or sold by this Defendant.

(h) That while each of the alleged applications for each of [353] said pretended Letters Patent were pending in the United States Patent Office, the applicant therefor so limited and confined the claims of each of said applications under the requirements of the Commissioner of Patents, that Plaintiff cannot now seek for or obtain a construction for any claim of each of said pretended Letters Patent sufficiently broad to cover any device manufactured, used, or sold by the Defendant.

(i) That Defendant further alleges that the al-

leged inventions of each of said pretended Letters Patent, in view of the state of the art as it existed at the date of each of the alleged inventions, do not involve invention of any patentable novelty but consist of the mere adaptation of well known methods, devices and compositions of matter for the required uses involving merely the skill expected of one in the art to which each of said pretended Letters Patent pertain.

(j) That Defendant further alleges that the description of each of the alleged inventions and the specifications and claims of each of the pretended Letters Patent are not in such full, clear, concise and exact terms as to enable any person skilled in the art or science to which each pertains or to which each is most clearly connected to make compound or use of the same, or to determine what invention is claimed by each of said Letters Patent.

(k) That as patent owner or licensor of a large number of U. S. Letters Patent, plaintiff has sought to intimidate, harass and discourage competitors, to block and impede the development by others of the manufacture of slide fasteners and the constituent parts of machines and methods used in making slide fasteners, and has imposed upon competitors licenses and agreements requiring that the licensee compel such licensee's customers to take licenses under the same licensed patents directly from the plaintiff in such manner that the plaintiff shall collect at least two royalties, upon the same licensed patent and shall also control competition.

(l) That the said David Silberman, the patentee

named in U. S. Letters Patent No. 2,437,793, here in suit, visited Los Angeles in August of 1948, and there met certain representatives of defendant. That said Silberman admitted to such representatives that his said United States Letters Patent of said Silberman would not hold water in court; but stated that he had extended rights or licenses under corresponding foreign patents of Great Britain and Europe to Imperial Chemical Industries, one of the largest chemical manufacturers in the world, which he was anxious to protect. Silberman thereupon agreed with defendant, for a due and valid consideration, to refrain from asserting any rights against defendant under his said United States Patent; and since that date, Defendant has duly performed the terms and conditions of said agreement on Defendant's part. That, by reason of the foregoing facts, defendant has a license under said Silberman patent and plaintiff, as assignee of Silberman, is bound by Silberman's acts and therefore has waived any rights to any prior charges of infringement which may have been made by Silberman before the grant of the license by Silberman, and plaintiff is therefore estopped to claim any infringement by defendant of the said Silberman Patent No. 2,437,793.

(m) That, continuously since 1946, Defendant and its predecessor has been and now is engaged in the manufacturing and selling of slide fasteners, which have been shipped into many states of the United States. That in April, 1948, before Plaintiff had acquired title to the Silberman patent in

suit, Grosvenor S. McKee, Vice-President of Plaintiff, upon his own request, was granted permission by Defendant to go through the plant of defendant by executives of Defendant, and that, after carefully inspecting the chain production machines of defendant, Mr. Kee stated to defendant's representative, in substance, that the machines and the methods employed therein did not infringe any Letters Patent then owned by Plaintiff and that Plaintiff would not cause the Defendant any trouble with respect [355] thereto. That thereafter, Plaintiff failed to assert any rights against Defendant, until this suit was instituted in October of 1949. That, believing such statements by a vice-president of Plaintiff, and in reliance thereon, Defendant has expended large sums of money in the production of such machines and methods. That, by reason of the foregoing facts, plaintiff is estopped to assert infringement by Defendant of any of the patents in suit, and is barred by laches and acquiescence from asserting the cause of action alleged in the Complaint.

(n) That certain of the claims of Poux Patent Nos. 2,078,017 and 2,169,176, alleged herein by Plaintiff to be infringed, were first inserted in the then pending Poux applications for the patents now alleged to be infringed by Defendant more than two years after the public including this defendant had, through competitors in the slide fastener industry, and the granting of Letters Patent to others, acquired the right to the subject matter of such claims.

That plaintiff is barred from enforcing the above or any one of the above of said patents by reason of the fact that it has misused its patents in violation of the anti-trust laws through the medium of licenses granted with restrictive production quotas and governing and/or controlling the manufacture, use or sale of unpatented articles, and plaintiff has come into court with unclean hands. [356]

COUNTERCLAIM

1. This counterclaim is filed and the jurisdiction of the Court is invoked to obtain relief pursuant to Section 4 of the Act of Congress of October 15, 1914. (15 U.S.C. Sec. 15) commonly known as the Clayton Act, for injuries resulting from violations, as hereinafter alleged, of Sections 1 and 2 of the Act of Congress of July 2, 1890 (15 U.S.C. Sec. 1, 2) commonly known as the Sherman Act, and of Section 3 of the Clayton Act (15 U.S.C. 14).

(A) This counterclaim relates to the manufacture, distribution and sale of slide fasteners, commonly known as zippers, production machines and methods of manufacture thereof.

(B) Constituent parts of the machine used in the trade in the making of such zippers include mechanisms effecting gap spacing or interruption of the closely spaced rows of fastener elements or members by interrupting the metal feed or "skipping" the tape.

2. For some time, in or about 1917, up to and including the date of filing of this counterclaim,

plaintiff, (then Hookless Fastener Company), has been constantly engaged in a continuing combination and conspiracy to restrain and to monopolize, and to attempt to monopolize, trade and commerce among the several states of the United States and with foreign nations in slide fasteners, commonly called zippers, having acquired in the interim at least seventy-five (75) per cent of the United States market therefor, all in violation of Sections 1 and 2 of the Act of Congress of July 2, 1890 (15 U.S.C., Sections 1 and 2) commonly known as the Sherman Anti-Trust Act, with the effect of substantially lessening competition and tending to create a monopoly in the manufacture and sale of such slide fasteners in violation of Section 3 of the Act of Congress of October 15, 1914, (15 U.S.C. 14), commonly known as the Clayton Act. Most of such efforts are evidenced by written agreements which formed a part of such combination and conspiracy, and by acts of and acquisitions of property by plaintiff, including Letters Patent of the United States, [357] all designed to further such combination and conspiracy, to restrain and to monopolize and to attempt to monopolize trade and commerce among the several States of the United States and with foreign countries, and to lessen competition with plaintiff.

3. That the slide fastener and parts thereof manufactured by plaintiff are shipped by it across state lines in interstate commerce to manufacturers of goods in which such slide fasteners are incorporated, to distributors of slide fasteners, and to

customers located in substantially every State of the United States.

4. Plaintiff and its predecessor, from the date of the incorporation of the latter, has concentrated its activities and resources on the development especially of slide fasteners, and during the decade starting with the first of January, 1920, Plaintiff or its predecessor claimed to have a monopoly of the United States Letters Patent covering the then only commercial slide fastener, and **methods and machines** for the manufacture thereof.

5. Thereafter, Plaintiff or its predecessor acquired a large number of patents relating to slide fasteners and parts thereof and **methods of manufacture** thereof and abused and misused its said patent holdings to prevent competition in commerce in the manufacture and sale of such slide fasteners, parts thereof, machines and methods.

6. That, as patent owner or licensor of a large number of U. S. Letters Patent, plaintiff has sought to intimidate, harass and discourage competitors, to block and impede the development by others of the manufacture of slide fasteners and the constituent parts of machines and methods used in making slide fasteners, and has imposed upon competitors licenses and agreements requiring that the licensee compel such licensee's customers to take licenses under the same licensed patents directly from the plaintiff in such manner that the plaintiff shall collect at least two royalties upon the same licensed patent and shall also control competition. [358]

7. That about April, 1949, in accordance with its usual practice, plaintiff acquired United States Patent No. 2,437,793, essentially for the purpose of assisting it in the continuance of its monopoly and especially to sue defendant, a relatively small manufacturer of such slide fasteners, well knowing that the patent was invalid, and that David Silberman, the patentee, (the same David Silberman referred to by the Court by a relatively recent decision of the Federal Court decision of the Second Circuit in *Conmar v. Lamar* and David Silberman), was not the true inventor of the subject matter disclosed and claimed in said patent, and that, upon information and belief, plaintiff is making no commercial use of any of the inventions covered by any of the claims of said Letters Patent.

8. That, upon information and belief, during the course of plaintiff's attempt to monopolize and monopolization, it has succeeded in controlling more than seventy-five per cent of the commercial sales of slide fasteners in the United States, and in restraining competition in commerce therein.

9. That plaintiff and its predecessor have never validated any of the patents enumerated in this suit, but, on the contrary, have brought many suits in various Federal Courts throughout the country under one or more of such patents with the sole intention of furthering its attempt to monopolize and monopolization by having the defendant recognize the validity of the patents sued upon and their infringement, whether or not such was true, and, in most instances, have settled such suits by

requiring the defendant therein to accept a relatively limited quota of slide fasteners in the commercial market of the United States.

10. That plaintiff is continuing its attempt to monopolize and monopolization essentially through Letters Patent of the United States, despite the fact that the patent art is now a relatively crowded one, and that, in the present suit, plaintiff is unreasonably using and asserting claims under Letters Patent owned by it against [359] this defendant who, under any reasonable interpretation of such claims, does not infringe them, and that one or more of said suits have been brought by the plaintiff against a defendant or defendants for the manufacture of slide fasteners, which defendant or defendants were not even manufacturing the major parts of slide fasteners, such as "stringers" comprising tapes provided with rows of predetermined spaced interlocking elements.

11. That the acts of Plaintiff, as hereinabove set forth in Paragraphs marked 2 to 10, inclusive, hereof are forbidden by Sections 1 and 2 of the Sherman Act above referred to, and said acts have injured Defendant in its business by preventing and restricting the sale by defendant of its products, thereby injuring the defendant to the extent of Two Hundred Fifty Thousand (\$250,000.00) Dollars.

12. That the acts of Plaintiff as hereinbefore set forth in Paragraphs numbered 2 to 10, inclusive, hereof, are forbidden by Section 3 of the Clayton Act, above referred to, and said acts have injured defendant in its business by preventing and

restricting the sale by defendant of its products, thereby injuring defendant to the extent of Two Hundred Fifty Thousand (\$250,000.00) Dollars.

Therefore, Defendant, Union Slide Fastener, Inc., counterclaiming prays:

(a) That Plaintiff Talon be ordered to pay treble the amount of damages sustained by defendant by reason of the unlawful combination and conspiracy to restrain and monopolize trade herein described.

(b) That the court allow the defendant, and order Plaintiff to pay, the full cost of this suit, including reasonable attorneys' fees for the services of defendant's attorneys.

(c) That Plaintiff and its officers, directors, agents, representatives and all persons and corporations acting or claiming to act on behalf of it be enjoined from committing the acts hereinabove complained of to the detriment of the defendant's business, as [360] hereinabove set forth.

(d) That Defendant be granted such further and other relief as the Court shall deem just in the premises.

Dated, Los Angeles, California, this 1st day of October, 1956.

/s/ ALLAN D. MOCKABEE,

Attorney for Defendant. [361]

Affidavit of Service by Mail Attached. [362]

[Endorsed]: Filed Oct. 1, 1956.

In The United States District Court, Southern
District of California, Central Division

Civil Action No. 10450-C

TALON, INC.,

Plaintiff,

vs.

UNION SLIDE FASTENER, INC.,

Defendant.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

This cause having come on before the Honorable Court and trial of the issues having been completed, the Court does make the following Findings of Fact, Conclusions of Law and Judgment:

Findings of Fact

I.

Plaintiff, Talon, Inc., is a corporation duly organized under the laws of the commonwealth of Pennsylvania, having its principal place of business in the city of Meadville, Pennsylvania.

II.

Defendant, Union Slide Fastener, Inc., is a corporation duly organized under the laws of the State of California, having its principal place of business in the City of Los Angeles, California.

III.

That this Court has jurisdiction over the parties,

this [363] cause being based upon the patent laws of the United States for infringement of United States Letters Patent as follows:

1,903,659—Issued April 11, 1933
2,026,413—Issued Dec. 31, 1935
2,078,016—Issued April 20, 1937
2,078,017—Issued April 20, 1937
2,169,176—Issued Aug. 8, 1939
2,437,793—Issued March 16, 1948

and also upon diversity of citizenship of the parties, the matter in controversy exceeding the sum of Three Thousand Dollars (\$3,000), exclusive of interest and costs. By stipulations the patents in issue are Poux, 2,078,017 and claims 1 through 4, 16 and 17 thereof, and Silberman 2,437,793 and claims 1 through 4, 13, and 32 through 40 thereof.

IV.

The field concerning the zipper art is a crowded one.

V.

Patent No. '017 to Poux expired on April 20, 1954, subsequent to the filing of the complaint and prior to the trial of this cause.

VI.

Patent No. '017 to Poux and claims 1 through 4, 16 and 17 thereof are not basic and generic, Sundback No. 1,331,884 probably having made the greatest contribution with respect to the general concept of the Poux disclosure.

Poux '017 purports to form the zipper element from a continuous strip of stock material, operating upon it with a progressive die assembly consisting of an underlying die and a set of differently shaped punches mounted for reciprocating movement above it. The strip of rotating stock with a nearly completely formed zipper element on its leading end is fed to an intermittently moving tape whose movement is across the line of movement of the strip of stock. [364] Approximately at the time the open jaws of the leading zipper element reach a point astraddle the tape, the jaws are clamped on the tape and the zipper element is completely severed from the strip of stock. Thus, the zipper element is intended to be held in proper position for clamping to the tape by said strip of stock.

Sundback 1,331,884, prior to Poux, clearly teaches formation of the zipper element from a continuous strip of stock material with a progressive die assembly. He severs the formed element from the strip of stock but it is retained in position in the strip by those portions of the strip from which it is stamped, until the leading zipper element is fed to and clamped upon the tape.

VII.

At the time of Poux '017, there were machines in use which formed the individual zipper elements and other machines which attached them to the cloth tape. This necessitated costly and precise handling of the individual and separate zipper elements and it was difficult to properly set them on

the tapes. However, Sundback, in patent No. 1,331,884, had previously patented a single machine which performed both the forming and the attaching functions and this machine was in successful use prior to Poux.

VIII.

Poux '017 did not solve a problem but its disclosure merely stated a problem and a desirable end result. He stated in his patent that it would be desirable to overcome the problem of handling pre-formed zipper elements by keeping them attached to the strip of stock and not completely severing them until they were attached to the tape. In substance, his claimed method so stated, but he did not teach a workable manner or means of accomplishment of the desired result.

IX.

Poux '017 and claims 1 through 4, 16 and 17 thereof, did not teach how his alleged method could be put in operation and the [365] machine illustrated therein could not be operated.

He stated he formed a recess on one side of a rod of stock and a projection on the other. The rod was to be moved rectilinearly but the formed projection could not, according to his disclosure, be lifted from the depressed portion of the die in which it was formed. He did not disclose how a substantial amount of metal could be punched from a small round wire or rod of stock without distorting the stock beyond its condition of usefulness. The die as shown separately is not the same as the

die in the partial assembly and there is no plausible explanation as to how either form of die could operate. The severing cutter in its operation would distort and partially close the key-hole slot punched in the stock. There is no means shown or described for preventing the leading zipper element of Poux '017 from being shifted laterally during the severing operation and in the absence of such means, the zipper element would not be properly alined with the tape. The disclosure in Poux '017 is faulty and inadequate throughout.

X.

In addition to lack of disclosure of a workable method, Poux '017 and claims 1 through 4, 16 and 17 thereof are invalid by reason of prior disclosure in the art of the method of achieving the end result desired by Poux. Sundback 1,331,884 discloses the general method which includes forming the zipper elements from a strip and retaining them in position by means of the strip until they are clamped on the tape. The patent to Smith No. 1,533,352 is prior to Poux and teaches the formation of fastener elements from a strip of stock wherein the individual elements are kept integral with the strip and not severed until they are secured in final position. The prior patent to Johnson 1,731,667 discloses Poux' steps of:

1. Forming on a long strip of material and interlocking member with recesses and projections and also jaws; [366]

2. Placing said jaws astride the edge of a tape while the member is integral with the strip;
3. Closing the jaws.

XI.

Silberman '793 and claims 1 through 4, 13 and 32 through 40 thereof, contains machine elements, all of which are shown in the prior art. Sundback 1,331,884 discloses a base, a ram movable with relation to the base, means for feeding a substantially uniform metallic strip between the ram and the base, means for feeding a tape in a fixed path past the end of the feed strip, the ram and the base having complementary means for forming and separating a slide fastener element from the feed strip and a pair of jaws for engaging and closing the element upon the edge of the tape as it is separated from the strip.

XII.

The disclosure and the claims in issue in Silberman '793 and plaintiff's machine Exhibit 5 are not the same machines. The machine of Exhibit 5 has elements of structure not found in the disclosure of the Silberman patent in suit, including:

(a) Spring leaves, each having an anchored end and an opposite end secured to the vertically moving ram which carries the punch assembly to enable the punch to be reciprocated approximately vertically at high speed.

(b) A lip or overhang on the closing jaw to engage the zipper element as it is being clamped on the tape and prevent the zipper element from being

tilted during the substantially simultaneous severing of the element from the strip.

(c) An ejector die to strip the formed and severed zipper element from the final punch in the series and prevent severed elements from bunching up [367] on the final punch (Exhibit 5A).

(d) No "V"-shaped ram as in the Silberman patent because the V-shaped ram of the patent prevented high speed operation.

(e) A device for providing spacing between sets of fasteners.

(f) A vacuum or suction device functioning to remove small metal chips from the vicinity of the dies and punches to prevent the machine from jamming.

XIII.

Silberman '793 and the claims in issue and the accused machine are not the same. A different result is obtained. The square shouldered zipper produced by the accused machine distinguishes from Silberman's round shouldered zipper and serves a useful purpose in ease and efficiency of operation. Silberman's round shouldered zipper element is formed with a burr on each side which must be removed and even then there is a roughness which interferes with smooth action of the slider which interlocks and disengages the complementary zipper elements on a pair of zipper tapes. Defendant's accused machine produces a square shouldered zipper element which is stronger and more firmly grips the tape and because it does not have burrs such as in Silberman, it operates more smoothly.

XIV.

The machine of Silberman '793 is not the machine described in Poux '017 and it was not the result of years of effort to develop a machine which could practice the alleged method of Poux '017. The machine of Silberman '793 was designed to form zipper elements from a thin flat strip whereas Poux '017 discloses wire stock which is either round or square in cross section. Poux disclosed no means for correlating and synchronizing the relatively movable parts whereas Silberman and patents prior to Silberman do show such means. Poux [368] ineffectively attempted to teach the formation of a key-hole slot through the bar of stock while Silberman had no such formation at all. Poux attempted to teach spreading of the jaws of the element by forcing a spreading punch between the jaws. Silberman stamps out his elements with the jaws in open position and his machine contains no jaw spreader.

That the machine of Silberman '793 was not the result of years of effort to develop a machine which could practice the alleged method of Poux '017 is not true because of the teachings prior to Silberman in Sundback 1,331,884, Johnson 1,731,667 and other patents prior to Silberman.

XV.

Meech of plaintiff claims to have examined a machine embodying the features of the Silberman disclosure in 1945 and to have seen it operate at high speeds. Three years later Talon secured an option to buy the Silberman patent, the option having

been taken subsequent to the time plaintiff's vice president McKee examined defendant's machines in 1948. McKee revealed to plaintiff his interest in defendant's operations, yet his report to his company contained no information that he observed infringement on the part of defendant, but he made oral statements to the then president of defendant that defendant's machines did not infringe plaintiff's patents. These facts lead the court to find that the improvements on defendant's machines made by defendant Lipson and observed by McKee, caused Talon to buy Silberman '793.

XVI.

Inspection of plaintiff's charts of elements of the claims in issue in Silberman '793, even though the charts are misleading and not structurally correct, shows that every element in the Silberman patent was present in the prior art.

XVII.

The plaintiff's chart on the elements of the claims in issue [369] in Poux '017, coupled with the admission of plaintiff's expert regarding the showing in Johnson patent No. 1,731,667, that plaintiff's chart (Ex. 19), in the column under the Johnson patent, items 1, 2 and 3, should have stated "yes" instead of "no". This then makes it clear that plaintiff's own Exhibit 19, shows that everything in the Poux patent was present in the prior art. The items referred to in the chart are:

1. Forming on a long strip of material an inter-

locking member with recesses and projections and also jaws,

2. Placing said jaws astride the edge of a tape while the member is integral with the strip,

3. Closing the jaws.

XVIII.

The patent to Smith No. 1,533,352, relating to paper box fasteners is in an art related to the alleged method of the claims in issue of Poux '017.

XIX.

The file wrappers of the Poux and Silberman patents in suit clearly show that the arguments advanced to show patentability over the references cited by the Patent Office and relied upon by defendant, bear little or no relationship to the contentions made at trial by plaintiff in urging the validity of the claims in issue of those patents.

XX.

Plaintiff's proof fails to show that a machine of the claims in issue of Silberman '793 ever operated.

XXI.

Defendant's principal witness, Lipson, was a creditable witness and the court credits Lipson and not Loew or other witnesses where their testimony conflicts with that of Lipson. [370]

XXII.

Silberman entered into a verbal license agreement with defendant and subsequent actions of defend-

ant, including expansion of defendant's facilities for manufacturing zippers were made in reliance upon that license.

XXIII.

Defendant relied upon plaintiff's McKee's statement to defendant's Loew that no patents of plaintiff were infringed, and in reliance upon that statement, defendant continued to work on machines it was manufacturing and expended money in expanded manufacturing facilities.

XXIV.

In Lipson's testimony, in statements made in the first person, Lipson was speaking for the defendant corporation as well as for himself.

XXV.

Letters, Exhibits 15 and 18, alleged to be notices of infringement on behalf of Silberman to defendant, were written prior to Silberman's conversation with Loew and Lipson about August 15, 1948 and therefore were prior to the license granted by Silberman to defendant.

XXVI.

Silberman was not the sole inventor of the device of the claims in issue of his patent '793 and it was at least in part, the work of Havacost.

XXVII.

Prior to World War II plaintiff had 60% of the zipper market in this country and its biggest com-

petitor Conmar had 15% of the market or 25% of that of plaintiff.

XXVIII.

Under the contract between plaintiff and Conmar, the patents pooled therein effected approximately 75% of the domestic market. [371]

XXIX.

Subsequent to World War II, plaintiff's share of the market was down to about 30% of the market. However, plaintiff was still the largest manufacturer of zippers in the United States and still held a dominant position in the market and its influence was further increased by the patent pool resulting from the various license agreements.

XXX.

The American agreement, Exhibit AH, was a contract for dividing the zipper market and antedated Poux '017, and many of the provisions of the contract carried beyond the issuance of the Poux patent.

XXXI.

The conference in Los Angeles between plaintiff and the local zipper manufacturers in that city in 1949 was held in an attempt by plaintiff to maintain price control and evidenced an intent to misuse plaintiff's patents and to violate the anti-trust laws, and thereafter plaintiff in April 1952 introduced a cheap zipper in the Los Angeles area.

XXXII.

The licensing contracts entered into between

plaintiff and a number of other zipper manufacturers contained restrictive quotas, providing for increased royalties a production in excess of free quotas increased and constituted a quota system established by plaintiff.

XXXIII.

The grant of licenses by plaintiff to others with royalty-free quotas, leads to the inference that it was unprofitable for such licensees to produce beyond their quota and pay the high royalty rates provided and the licensees did not exceed free quota limits for that reason. [372]

XXXIV.

While some licensees of Talon did not pay royalties to plaintiff, in some cases they did, and in no case did plaintiff pay royalties to the licensees on the cross licensed patents.

XXXV.

The license agreements entered into by plaintiff and referred to in Findings 32 and 33 produce the net result that the product of plaintiff's licensees was curtailed.

XXXVI.

Plaintiff's contract with Conmar, next to plaintiff the greatest producer of zippers in the United States, provides that Conmar have a royalty free quota of 25% of plaintiff's production with variations. Only after commencement of this action and the assertion of antitrust offenses did plaintiff revise the Conmar contract and eliminate the quota features.

XXXVII.

The contract between plaintiff and Starr, Exhibit U, provided that the suit pending by plaintiff against Starr be continued as long as permitted by the Court, and if Starr breached the settlement agreement and license, or the Court would not permit further continuances, then Starr would permit entry of judgment that plaintiff's patents were good and infringed and that the court should make no other findings.

XXXVIII.

The contract Exhibit 7 clearly ties in unpatented with patented art when the licensee exceeded its quota of production provided for.

XXXIX.

The activities of plaintiff in which numerous suits were filed and settled without trial upon the grant of quota licenses which amounted to a scheme to restrict the production of competitors are apparent, and typical of these activities was plaintiff's commencement [373] of the present action after McKee, an official of plaintiff, had found no infringement and plaintiff apparently made no further inspection or investigation.

XXXX.

Plaintiff intended and attempted to monopolize a substantial part of the zipper market, has misused its patents and has unclean hands.

XXXXI.

Plaintiff's contention that the various licensees

of plaintiff were infringing plaintiff's patents is unsound because of the different methods used by various of the licensees such as its largest competitor Conmar.

XXXXII.

Plaintiff's acts in connection with the restricted licenses must necessarily have created a substantial impact on the supply of zippers in interstate commerce in the United States and there was public injury.

The facts in this case regarding the imposition of restrictions on production by plaintiff go far beyond the facts in *United States vs. E. I. Dupont De Nemours & Co.*, decided by the Supreme Court of the United States on June 11, 1956.

XXXXIII.

Plaintiff's conduct is convincing that it considered the validity of Poux '017 and Silberman '793 as being questionable and had not heretofore permitted their adjudication.

XXXXIV.

Notwithstanding the licenses by Silberman and assurances given defendant by Silberman and McKee, this suit was instituted by plaintiff with no further investigation as to infringement.

XXXXV.

The action was brought by plaintiff in bad faith and without reasonable belief in the validity of the patents and the litigation [374] proves harassment and misconduct on plaintiff's part.

XXXXVI.

Plaintiff, under the pretext of examining defendant's machinery to determine possible patent infringement of which it had no actual knowledge, secured consent to examine defendant's machinery only for the purpose of determining whether infringement existed, and while under color of such an examination learned of a number of improvements which defendant had made upon zipper machinery and copied defendant's improvements in plaintiff's machinery Ex. #5 without compensation to defendant. These improvements by defendant are those listed in Finding #XII.

XXXXVII.

The restrictive quota licenses entered into by plaintiff were in settlement of suits against its competitors, and none of them were allowed by plaintiff to go to a contested decree to determine the validity of plaintiff's patents.

XXXXVIII.

Having considered the acts of plaintiff leading up to the prosecution of this action against defendant and the fact that plaintiff has acted in bad faith and with unclean hands and has misused its patents, defendant is entitled to reasonable attorneys fees. Taking into consideration the nature and complexity of the case; the length of the trial; the depositions taken; the experience, standing and eminence of counsel; the quality of skill demonstrated; the importance of the case to the plaintiff and defendant; the risk of the client and responsi-

bility of the counsel; the time fairly and properly expended in preparation out of court; time in court; and the results accomplished, it is found that the reasonable value of the services of attorneys for the defendant is Twenty Thousand Dollars (\$20,000.00).

In considering the relative importance of the work done by defendant's attorneys with regard to violation of the anti-trust laws, while it was done in part in support of defendant's counterclaim, [375] it was also done as part of the work showing the defense of unclean hands and the material regarding anti-trust violations was used as a shield in defense of the patent suit as well as a sword in connection with the counterclaim. It was nearly all pertinent to the defense to plaintiff's action, even though the counterclaim failed.

It is found that the anti-trust problem is the only substantial issue if an appeal is taken. To provide for the contingency, that on appeal the reviewing court should find no violation of anti-trust laws and be confronted with an apportionment of fees, and a remand for the purpose of fixing of fees without regard to services rendered on the anti-trust violation, then, excluding the services regarding anti-trust violations; the reasonable value of attorneys fees for defendant is Eighteen Thousand and Five Hundred Dollars (\$18,500.00). [376]

Conclusions of Law

I.

Poux patent No. 2,078,017 and claims 1 through

4, 16 and 17 thereof is invalid as being anticipated by the prior art and because it did not teach a workable method.

II.

Silberman patent No. 2,437,793, is invalid in view of the prior art as being an aggregation and not a patentable combination bringing about a new result and plaintiff's proofs failed on the issue that the machine of Silberman '793 ever operated.

III.

The understanding between Silberman and defendant on or about August 15, 1948, was relied upon by defendant which changed its position in reliance thereon and defendant was therefore licensed under Silberman '793.

IV.

Plaintiff purchased Silberman '793 subject to the existing licenses from Silberman to defendant and was estopped from thereafter withdrawing the license or charging that the defendant infringed.

V.

Silberman was not the sole inventor of his patent in suit.

VI.

Poux '017 is invalid on its face as not teaching a method but an end result.

VII.

Reliance by defendant upon Silberman's statement that he would not sue defendant for infringe-

ment under his patent '793 if defendant refrained from selling machines in certain export markets and plaintiff's officer McKee's report to plaintiff which failed to indicate infringement and McKee's statement to Loew, former president of defendant, that there was no infringement, and defendant's reliance thereon which included expansion of defendant's facilities [377] created an estoppel against plaintiff to subsequently assert infringement and constituted a waiver by plaintiff of a right to sue.

VIII.

By reason of the license agreements entered into between plaintiff and a number of other competing companies, and by further reason of conduct of plaintiff, plaintiff was guilty of misuse of its patents, bad faith, unclean hands and violation of the anti-trust laws. Therefore, plaintiff is not entitled to maintain this action even if the patents in suit were valid and/or infringed.

IX.

Plaintiff's contracts between it and competing companies and its attempts to control prices in the Los Angeles area accompanied by a threat of a price war if prices were not controlled, constitute a violation of the anti-trust laws.

X.

The production restricting contracts entered into between plaintiff and its competitors, the circumstances under which many of those contracts were

made, the attempt to control prices in the Los Angeles area, the introduction of a cheaper and inferior brand of zipper in the Los Angeles area subsequent to the attempt to control prices there, the appropriation by plaintiff of improvements made by defendant on its machines under the guise of an infringement investigation, and the purchase of the Silberman patent '793 shortly prior to suit against defendant and the subsequent filing of said suit all constitute steps in a deliberate scheme to control zipper production in the Los Angeles area and throughout the United States.

XI.

Plaintiff was guilty of bad faith amounting to fraud in securing consent to inspect defendant's machinery for possible patent infringement and in utilizing such inspection to gain from defendant numerous improvements in zipper machinery which were incorporated in plaintiff's machines without compensation to defendant. [378]

XII.

Plaintiff through its license agreements with competitors compelled the payment of royalties on unpatented materials and therefore misused its patents in violation of the anti-trust laws.

XIII.

The anti-trust laws may be used as a shield as well as a sword and are available in this case as a complete defense against infringement and the validity of the patents.

XIV.

A patentee, acting alone, may choose his licensees and fix territories and even prices. What the patentee does with his patents is a question of fact and its legality is a question of law and as a matter of law the patents in suit have been misused.

XV.

The acts of plaintiff in misuse of its patents and in violation of the anti-trust laws substantially affected interstate commerce in zippers and the public was injured.

XVI.

In view of the conduct of plaintiff in connection with events leading up to and the bringing of this suit, as set forth in the findings of fact, it is held that defendant is entitled to an award of attorneys fees in the amount of Twenty Thousand (\$20,000.00) Dollars. In the event that on appeal the reviewing court should find no violation of the anti-trust laws and be confronted with an apportionment of fees, and a remand for the purpose of fixing such fees without regard to services rendered on the anti-trust violation, it is found that, excluding services regarding anti-trust laws violations, the reasonable value of attorneys fees for defendant is Eighteen Thousand Five Hundred (\$18,500.00) Dollars.

XVII.

The defendant having failed to prove injury to defendant in its business or property arising out of any of the actions complained [379] of in the

Counterclaim, the Counterclaim cannot be maintained and must be dismissed.

Judgment

Based upon the Findings of Fact and Conclusions of Law, it is hereby adjudged that claims 1 through 4 and 16 and 17 of United States Patent No. 2,078,017 to Poux and claims 1 through 4, 13 and 32 through 40 of United States Letters Patent No. 2,437,793 to Silberman, are invalid and void and not infringed by the defendant, and that the plaintiff take nothing and the complaint be dismissed.

It is further adjudged that the defendant take nothing on its Counterclaim, and that the Counterclaim be dismissed.

It is further adjudged that defendant have and recover from the plaintiff the sum of Twenty Thousand Dollars (\$20,000.00) in attorneys fees and its costs in the amount of..... Dollars.

Dated: May 24, 1957.

/s/ JAMES M. CARTER,
Judge. [380]

Affidavit of Service by Mail Attached. [381]

[Endorsed]: Filed May 24, 1957. Docketed and Entered May 31, 1957.

[Title of District Court and Cause.]

NOTICE OF APPEAL

To: Union Slide Fastener, Inc. and Allan D. Mockabee and William J. Graham, its attorneys:

Notice is hereby given that Talon, Inc. hereby appeals to the Court of Appeals for the Ninth Circuit from the judgment entered in this action on May 31, 1957, and particularly from the first and third paragraphs of said judgment.

Dated this 21st day of June, 1957.

LYON & LYON,

/s/ By CHARLES G. LYON,

Attorneys for Plaintiff. [382]

[Endorsed]: Filed June 21, 1957.

[Title of District Court and Cause.]

MOTION

Comes now the plaintiff, through its attorneys, and moves this Honorable Court for an order extending the time for the plaintiff-appellant to file the record and docket its appeal in the Court of Appeals for the Ninth Circuit the full 50 days until September 19, 1957. This motion is based upon the annexed affidavit of Charles G. Lyon.

LYON & LYON,

/s/ By CHARLES G. LYON,

Attorneys for Plaintiff.

Approved and so ordered:

/s/ LEON R. YANKWICH,

United States District Judge.

[Title of District Court and Cause.]

AFFIDAVIT OF CHARLES G. LYON

State of California,
County of Los Angeles—ss.

Charles G. Lyon, being first duly sworn, deposes and says:

That in this case there has been an appeal taken by the plaintiff from the judgment against it on the complaint. That in the meantime, the defendant has filed and noticed a motion for a new trial with respect to the counterclaim which is presently set for hearing August 12, 1957, with a result that should appellant file the record and docket its appeal within the time originally allotted, the record of this case would be in the Court of Appeals while the Court is hearing [385] and considering defendant's motion for a new trial. That the simplest way to prevent such inconvenience is for the Court to extend the time for docketing of the appeal the full amount of time permitted by law.

/s/ CHARLES G. LYON.

Subscribed and sworn to before me this 19th day of July, 1957.

[Seal] /s/ SHIRLEY A. HARNEY,
Notary Public in and for said County and State.
My Commission Expires May 16, 1960. [386]

[Endorsed]: Filed July 19, 1957.

[Title of District Court and Cause.]

CERTIFICATE BY CLERK

I, John A. Childress, Clerk of the above-entitled Court, hereby certify that the items listed below constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit, in the above-entitled action:

A. The foregoing pages numbered 1 to 386, inclusive, containing the original:

Complaint, filed 10/17/49.

Interrogatories propounded to Defendant Under Rule 33 FRCP, filed 11/21/50.

Amended Answer and Counter-Claim, filed 4/19/51.

Reply to Counterclaim (plaintiff) filed 5/5/51.

Defendant's Answer to Plaintiff's Interrogatories, filed 5/10/51.

Further Interrogatories Propounded to Defendant, under Rule 33, FRCP, filed 7/26/51.

Defendant's Answer to Plaintiff's Interrogatories, filed 3/3/52.

Interrogatories Propounded to Plaintiff Under Rule 33 FRCP, filed 3/28/52.

Plaintiff's Answers to Interrogatories propounded by Defendant and Served March 18, 1952—filed 5/8/52.

Plaintiff's Answer to Interrogatory No. 82 in Interrogatories propounded by Defendant and Served March 18, 1952—filed 5/8/52.

Minute Order (copy) dated 11/24/52.

Further Interrogatories propounded to Plaintiff, filed 12/11/52.

Plaintiff's Answers to Interrogatories propounded by Defendant and Served December 10, 1952—filed 2/19/53.

Pre-Trial Stipulation and Order, filed 3/30/53.

Hand written list of exhibits and witnesses.

Amendment to Reply to Defendant's Counterclaim, filed 3/8/55.

Amendment to Defendant's Amended Answer and Counterclaim, filed 3/15/55.

Memorandum to Counsel, filed 7/17/56.

Minute Order (copy) dated 7/17/56.

Memo to Counsel Re: Attorneys Fees, filed 8/13/56.

Amended Answer, filed 10/1/56.

Findings of Fact, Conclusions of Law and Judgment.

Notice of Appeal.

Designation of Record on Appeal.

Motion re: extension of time in which to file and docket record on Appeal.

B. Eleven (11) Volumes of Reporter's Official Transcript of proceedings had on 3/1, 3/2, 3/3, 3/4, 3/8, 3/9, 3/10, 3/11, 3/15/55; 8/2 and 8/3/1956; and 11/26/56.

C. Plaintiff's Exhibits 1 to 22, inclusive.

Defendant's Exhibits A to Z, inclusive, AA to

AO, inclusive, AQ to AY, inclusive, BB to BZ, inclusive and CA and CB.

D. Depositions of: Philip Lipson, filed 7/18/52, marked as Plf's Exb. 6; Sigmund Loew, filed 12/15/52, marked as Defendant's Exb. Q; Robert Eisenberg, marked as Defendant's Exhibit AK; Wilbur B. Jager, filed 12/8/52, marked as Defendant's Exhibit AI; Isadore O. Napp, filed 12/10/52, marked as Defendant's Exhibit AL; C. F. Detweiler, filed 1/8/53, marked as Defendant's Exhibit AJ; John T. Havekost, filed 1/17/55, marked as Defendant's Exhibit AM; William Wray, filed 3/1/55, marked as Defendant's Exhibit AN; Isadore Napp, filed 9/27/55, marked as Defendant's Exhibit BR; William U. Hepworth, filed 9/27/55, marked as Defendant's Exhibit BS.

E. Brown envelope containing exhibits to deposition of Philip Lipson.

I further certify that my fee for preparing the foregoing record amounting to \$2.00, has been paid by appellant.

Witness my hand and the seal of said District Court, this 6th day of September, 1957.

[Seal]

JOHN A. CHILDRESS,
Clerk,

/s/ By WM. A. WHITE,
Deputy Clerk.

In the United States District Court, Southern
District of California, Central Division

No. 10450-C Civil

TALON, INC., Plaintiff,

vs.

UNION SLIDE FASTENER, INC.,
Defendant.

REPORTER'S TRANSCRIPT OF
PROCEEDINGS

Los Angeles, California

Tuesday, March 1, 1955

10:00 A.M.

Honorable James M. Carter, Judge Presiding.

Appearances: For the Plaintiff: Lyon & Lyon,
by Leonard S. Lyon, Esq., and Charles G. Lyon,
Esq., 811 West Seventh Street, Los Angeles, Cali-
fornia, and Evans & McCoy, by William C. McCoy,
Esq., Bulkley Building, Cleveland, Ohio. For the
Defendant: Allan D. Mockabee, Esq., 811 West Sev-
enth Street, Los Angeles, California. [1]*

(Other court matters.)

The Clerk: No. 10450-C Civil, Talon, Inc., vs.
Union Slide Fastener, Inc., for court trial.

Mr. Leonard Lyon: If the court please, I would
like to introduce Mr. William McCoy of the Ohio
Bar. He is a member of the Supreme Court of the

* Page numbers appearing at top of page of Reporter's Tran-
script of Record.

United States Bar. I ask that he be recognized for the purpose of this trial as counsel for the plaintiff.

The Court: Mr. McCoy will be admitted to participate in the trial of this action.

Mr. Leonard Lyon: With the court's permission, I would like to make an opening statement on behalf of the plaintiff.

The complaint in this case is for infringement of two patents. The first patent, No. 2,078,017, was granted on April 20, 1937, and has since expired, and the title of the patent is Method for Making Separable Fasteners. The inventor is N. J. Poux.

The Court: You say it has since expired. It has now expired, but it had not expired at the time this action was commenced?

Mr. Leonard Lyon: That is correct. This action was filed in October 1949, and this patent expired on April 20, 1954. [3]

The Court: Can we refer to that patent throughout the case as '017?

Mr. Leonard Lyon: Yes, your Honor.

The Court: Is that agreeable?

Mr. Mockabee: Yes, sir.

Mr. Leonard Lyon: By pretrial proceedings and pretrial order the plaintiff has elected to stand on claims 1 to 4, 16 and 17 of this patent.

The second patent in suit is No. 2,437,793, and was granted on March 16, 1948. The inventor is named Silberman, S-i-l-b-e-r-m-a-n, and the patent is entitled Zipper Manufacturing Machinery.

The Court: Can we refer to that throughout the trial as '793?

Mr. Leonard Lyon: Yes, your Honor.

The Court: Very well. [4]

Mr. Leonard S. Lyon: The pretrial order specifies that the claim in issue of this patent are claims 1 to 4, 13 and 32 to 40.

I might say, your Honor, that the plaintiff is primarily interested in this case in securing an adjudication in its favor on the second patent, the '793 patent.

The earlier patent has expired and the real reason for keeping it in the case is because it furnishes a proper evaluation or its adjudication will furnish a proper evaluation and background for the second patent. In other words it has to be considered in connection with the second patent even though we should be willing to dismiss the first patent and therefore we are asking that it be considered in the light of being adjudicated.

Now, the two patents in suit both relate to the manufacture of stringers for use in slide fasteners or zippers as they are called.

I have for illustrative purposes here the type of slide fastener or zipper that we are talking about.

(Handing object to the court.)

You will note that the zipper is formed of two stringers and I hand up to the court for illustrative purposes a specimen of a stringer that is employed in making the zipper of the slide fastener type.

The two stringers are combined with a slide to make the [5] slide fastener or zipper.

Now, these two patents in suit relate to the manufacture of those stringers.

The first patent is a method patent and as we contend discloses an entirely fundamentally new method of manufacturing slide fastener stringers.

The second patent is a patent for a machine and as we contend is the first successful, practical machine for practicing the method covered in the first patent.

The first patent was applied for on January 3, 1931.

The second patent was applied for on September 23, 1944, so a period of some 13 years intervened after the invention of the method before the production of a practical commercial machine that would perform that method, although in the meantime numerous other inventors were endeavoring to design such machines.

Now, I would like to give the court in short summary our appraisal of these patents, what their novelty is and what we contend their inventive characteristics are.

I realize that the court may have some difficulty in following much detail in advance of a very complete explanation of these patents, but I thought if you heard the language first it would help you in listening to the testimony and following the testimony even though you don't quite understand everything I am talking about. [6]

I will make it as plain as I can. First as to the slide fasteners and their characteristics, what requirements they impose on a method or machine.

You will note from the illustrative sample that I have handed you that the interlocking elements of zippers are tiny metal units, each having a recess on one side and a projection on the other that are spaced along the edge of a fabric tape.

I am handing up to the court for illustration a specimen which is wrapped in a piece of cellophane, of one of the zipper elements that I am referring to.

They are very tiny but you will note that the element has a recess on one side and a projection on the other and these elements are spaced along a tape to form a stringer.

The assembly of these elements on the tape makes what is known as a stringer. Perhaps you would like to look at one of those elements with a glass. If you will press the button you will light up the glass.

(Handing object to the court.)

Now, in the completed slide fastener or zipper these two stringers are interlocked by a slider.

The Court: Yes.

Mr. Leonard S. Lyon: If the elements are not properly made, spaced and clamped on the edge of the tape the interfitting of the elements of the two stringers will not properly [7] hold the tape together.

There is a very rigid requirement in the manufacture of these stringers or the slides will not function to either lock or unlock the zipper.

Faulty positioning of the elements on the tape

will cause a number of ills which the industry has sought to solve over a long period of years.

The jewel-like precision essential in making the zipper element and the precision of attachment to the tape have long been recognized as major problems in the zipper industry.

Judge Yankwich tried a case here a number of years ago for this plaintiff in which he was concerned with the spacing—how much space there was between these elements on a slide fastener and sustained one of the plaintiff's patents.

He was talking about the space between two zipper elements. We are talking about the precision with which these elements must be made and the precision which they must be oriented on this tape because if they are not oriented correctly, if one is cocked one way and another the other then it is impossible for the slide to function correctly and it is impossible for the zipper elements to function correctly. [8]

The Court: Are we concerned in this case with the patent, if there is one, by which these stringers are put together with a slide?

Mr. Leonard Lyon: No. Those patents have expired. There are numerous companies in the country manufacturing zippers. The only purpose in my dwelling on the subject was to acquaint your Honor with the standards or things, the problems that were imposed on the methods and machines that we are interested in.

One of the earliest methods of making zippers is what is generally known as the hopper method.

I might say, your Honor, that these zippers have been made in early forms without the slide for some 40 years, and the slide type for some 25 years has been in common manufacture.

One of the earliest methods of making this slide type of zipper element was known—or stringer—was known as the hopper method. In this case a strip of metal was fed through an ordinary punch press and pieces were punched out having the shape of the fastener elements with projections and recesses formed and with the legs spread apart.

You will notice that each one of those elements has two jaws or legs on it. These pieces without any arrangement at all were dumped into a hopper which fed down to a mechanism where an attempt was made to arrange the elements in sequence [9] with the legs pointing in the forward direction and with the projections in a position where they would properly go together on a tape edge. The difficulty with this hopper method was that the feed of the elements to their path of arrangement never was satisfactory, although zippers were made commercially from these elements over quite a number of years.

The zippers so made in many cases were subject to rejection, because elements were improperly assembled on the edge of the tape, and otherwise the process was expensive because of the very slow speed at which such a machine had to operate.

That was known as the hopper method. And your Honor will hear reference to it in the evidence.

Prior to the patents in suit, zippers were also

made on the machines of the kind which are shown in a prior patent to Sundback, No. 1,331,884, particularly Figs. 19 and 20 of that patent, and that patent will be before your Honor, undoubtedly, in the course of the case.

In this machine a strip of metal much wider than the zipper element to be formed was fed into the machine. First, blanks were cut from the strip, and those blanks were pressed back into the hole made in the strip. The strip then carried these individual elements through further steps. At one of these inter-stages a projection and recess was formed [10] in the blank. That element was then advanced and clamped on the tape by side tools which pushed in on the scrap material along each side of the elements to force the legs of the leading element closed on the tape. This machine was very slow and cumbersome, and the product was extremely poor in comparison with modern day standards. Almost half of the metal was wasted, and the machine required a very highly skilled operator.

Despite the high cost of making zippers on this machine, it was commercially used by plaintiff for many years.

The next machine which the plaintiff has used—and I might state that the plaintiff is a large manufacturer of these stringers. The next machine which the plaintiff used was covered and shown in a patent to Sundback, No. 1,467,015. It started with a wire of substantially the same cross-section as the final zipper element to be applied to the tape. This was of a Y cross-section. I don't know whether you

can tell from the specimen that I gave you that the stringers that I have shown you are made with zipper elements that have been made from flat metallic strip.

The Court: What was the number of that first Sundback patent?

Mr. Leonard Lyon: 1,331,884. The second one was 1,467,015.

The machines we are concerned with making the present day [11] zipper elements start with a flat strip of hard bronze or steel, and that is referred to in the patents as a metallic strip.

This other Sundback patent that I am just talking about now used a material of the form I just handed you.

The Court: In the shape of a "Y."

Mr. Leonard Lyon: In the form of a "Y."

In this second Sundback machine, slices were taken off of that Y-shaped rod and deposited in circular indexing head of a forming die—in the circular indexing head of a forming die. The indexing head rotated to bring the separated slices to a position where forming tools formed a projection and recess. The element so formed was then moved to a position where the edge of the tape could be pushed in between the legs of the element. Finally, the legs of the element were clamped onto the tape.

While the method eliminated waste material of the earlier methods, the machines were very expensive to make. The preforming of the Y section for the wire required a separate rolling machine and was expensive. The machines were slow and re-

quired skilled mechanics to operate them. The resulting zipper, while very expensive, was of excellent quality. This method has been used for many years by plaintiff, and was in use when Poux made his invention. It is still used by the plaintiff for part of its production. [12]

We come now to the method of the Poux patent. I am handing your Honor a copy of that patent '017.

As I have stated, we expect to show that the method of this '017 patent represented a new approach to the problems that confronted the manufacturers of these stringers. Poux in his patent starts with a metal rod—not a strip—a rod of round or square section. These are standard shapes for wire or rod. The recesses and projections for the interlocking member were formed in the rod. Openings for the legs were formed at different stages of the progress of the rod through the machine. The resultant legs on the end portion of the rod, while still connected to the rod were positioned to straddle the edge of the tape when the rod was fed forward. The body of the rod retaining the legs at its end provided a handle to hold the zipper element in proper position as the legs of the element were closed on the tape, and the end interlocking member was separated from the body of the rod.

The Court: In other words, the single elements were attached to the tape while the elements were still a part of the rod? [13]

Mr. Leonard S. Lyon: That is correct.

The Court: Then were cut loose from the rod.

Mr. Leonard S. Lyon: Simultaneously or practically simultaneously from the fastening, from the closing of the jaws of the tape to fasten the element, the front element on the tape. That element was cut from the rod——

The Court: It therefore secured the exact positioning.

Mr. Leonard S. Lyon: That is correct. By that arrangement you were sure of an alignment, among other things, the correct alignment of the element on the tape.

Now, so that your Honor may just have in mind what type of claim we have—the general breadth in the '017 patent to guide you in listening to the evidence, I call your Honor's attention to claim 17 which we rely on.

I think it is fairly self-explanatory. I think it is a fairly self-explanatory claim.

The method of forming separable fasteners which consist in forming on a long strip of material and interlocking member with recesses and projections and also jaws, placing said jaws astride the edge of the tape while the member is integral with the strip closing the jaws and severing the member from the strip.

Now in the '017 patent there are shown some of the elements of a machine for practicing that method.

The evidence will show that the drawings of the [14] '017 patent, insofar as they purport to show a machine or equipment that could be used in the

practicing of the method are incomplete in a number of respects, and the arrangement that he has shown in the patent, the apparatus that he has shown for practicing his method required that the rod be of such soft metal that it could be pierced through its body to form an opening between the parts that were later spread apart to form the legs of the end element of the rod.

In other words as you will find when you read that patent the jaws were formed by cutting out a key slot, a key-shaped slot in the metal and then afterwards when the front member was cut away that opened up the legs of that slot so that it provided the jaws and then the machine spread those jaws apart and then later clamped, when the rod was advanced to the proper position, clamped them on the tape.

The jaws for clamping the end element on the tape and the cut-off tool for severing the end element from the rod, both operate according to the description in that patent and while the ram of the machine was at its uppermost position and at rest.

The ram on its downward stroke again pierced the rod, spreading the legs of the element and formed a new recess in the top face and a projection in the bottom face of the rod.

This was a multiple operation machine in which the ram [15] formed the projections and recesses, pierced and spread the legs of the element in one stroke while the forward feeding of the rod and the cutting off and clamping on of the element on

the tape occurred while the ram of the press was raised.

The machine would handle only rods of round or square sections. The disclosed machine was not intended to operate on a flat thin strip.

The cut-off tools which are shown in this patent would so distort a flat wide strip as to ruin the element. Nevertheless many licenses were granted to the industry under this '017 patent during the 13-year interval between the filing of the application for that patent and the filing of the application for the second patent.

Plaintiff continued to use its previously described "Y"-shaped wire method. Many other zipper manufacturers used a process involving the manufacture of strips of fastener elements connected together.

This strip was formed in a separate operation on a rolling mill.

You will note that by cutting out the key slot and by punching the projections and recesses in this '017 patent that it is done by the same machine, the same unit that cuts off the final fastener and clamps it on the tape.

What I am referring to now is that during these intervening 13 years we were trying to simulate this method but they did [16] not have a unitary machine.

The projections and recesses were formed on another machine and the tape or the metal—I mean the metal strip with those recesses and projections formed in it were fed to the closing machine.

I am handing the court a specimen illustrating the practice that I have just referred to.

The Court: I have a question. If '017 is a method patent and not a patent on a machine how was the method practiced under '017?

Mr. Leonard S. Lyon: The full method of the '017 patent was in all its detail never practiced, I don't believe.

The patent presents a generic principle which is practiced in the second patent by the design of the machine in the second patent. But the second patent—the method that follows there is an improvement in some respects on the '017 patent.

The '017 patent status must be sustained on the theory that it represents a generic invention as distinguished from an improvement invention.

The courts have recognized and held that a generic patent in the very nature of things, is usually not a practical, necessarily a practical thing at all because it is the first of its kind in the art.

An improvement patent on the other hand is [17] supposed to represent a practical advance in the art but the courts have said that a generic patent will be sustained if it is operative at all even though it is impractical.

For instance, Bell's telephone which was on exhibit at the Philadelphia fair, there were over 100 witnesses who testified that they had listened to that telephone and they could all hear something but only a handful of them testified that they could understand what they heard, that the speech was intelligible at all.

That was because it was the generic, the first principle and those generic inventions are usually of that class.

Now, this Poux patent, as we will develop in the evidence, had certain defects and it wasn't until Silberman came along and invented his machine that Poux's generic invention was ever put to practical commercial use.

But going back to this earlier method, this intervening method where the tape and the projections and recesses were formed continuously on a piece of tape by a separate machine, this is illustrated in the Wintress patent which was referred to in the pleadings in this case, patent No. 2,336,662, of which figures 11 and 12 are illustrative and this method was known in the industry as the Conmar method.

One machine in this method made the preformed strip and the other machine cut off the elements one by one and attached them to the tape. [18]

The strip of connected formed metals after being cut off was put into a second machine of the kind shown in the Wintress patent.

In this machine the legs of the leading elements fed astride the tape. The machine clamps this element to the tape and cuts it off.

In spite of the fact that this Conmar operation required at least one preforming machine and a second machine for applying the element to the tape, the operations were fast and the zippers were less expensive to make than those made by the plaintiff on its "Y"-shaped wire machine.

I might say, your Honor, that the plaintiff has always taken the position that the Conmar method utilized the basic invention of the '017 patent. Your Honor will recognize that the continuous strip of metal is used there as a handle to present the front formed zipper element to the tape to be cut off just simultaneously with the attaching of the element to the tape.

I suppose that——

The Court: I am trying to visualize that operation. Assuming that the tape came across sideways—I mean the strip came across sideward and the tape was running up this way.

Mr. Leonard S. Lyon: Yes, your Honor, that is correct.

The Court: And the jaws were fastened on the tape. [19]

Mr. Leonard S. Lyon: That is correct.

The Court: And the strip would be cut off and the tape would move up.

Mr. Leonard S. Lyon: That is correct. The way the '017 patent shows the cutting off is exactly the way you did it. You passed your hand horizontally to the rod. If you had a flat strip of metal——

The Court: You could do it this way.

Mr. Leonard S. Lyon: And it was very hard and you couldn't do that, so the second patent in suit cuts off from the top and not from the side. You have to pass your hand downward.

Now, we come now to the patent, the second patent in suit, the '793 patent, and I will hand your Honor a copy of that patent. [20]

Silberman in this patent uses one stroke of a ram to completely form the element from a flat metal strip and attach the element to the tape.

In that respect he differs from the '017 patent which requires several strokes, and those strokes will be explained in the evidence. But a single stroke or a one stage operation does the job in the second patent.

In connection with illustrating the second patent, I have a chart which we will use in the evidence outlining claim 40 of the patent, and showing its application to the machine elements shown in the '793 patent.

As you will note from this chart, the ram of the machine is indicated by the red line above the tools, and the base of the machine by the broken black line leading to those tools that are carried by the base.

The Court: I am lost. You are talking about your chart now? Are you talking about the patent or the chart?

Mr. Leonard Lyon: On the chart.

The Court: Do you have a copy of this chart to let counsel see it?

Mr. Leonard Lyon: Yes. A substantially uniform——

The Court: I am lost. I didn't follow you.

Mr. Leonard Lyon: I will start over again, your Honor. The ram of the machine——

The Court: Which plate are you referring to?

Mr. Leonard Lyon: We have a colored chart, and on plate 1 we show the elements of the patent

in suit that are recorded within claim 40, and on plate 2 the general arrangement of the tools, we have reproduced the tool of the patent and applied the elements of the claim to those tools.

The third plate is the defendant's machine, and we do not need to discuss it at this point of my opening statement.

Now, referring to plate 2, the ram of the machine is indicated by the red line above the tools. You will notice that the red line carries over from the legend No. 2 a ram, and by the red line we carry the observer over to the tools that are indicated by that red line, and that is the ram.

Now, the next element is the base of the machine, and that is shown by the broken black line leading down from element 1 of the legend, and shows—the broken black line shows those elements which are mounted on the base of the machine.

The Court: Well, does that refer to the yellow object, or does it refer to something underneath the yellow object?

Mr. Leonard Lyon: It refers to the fact—the yellow object, for example, is mounted on the base of the machine, as distinguished from being carried on the ram.

The Court: The yellow object, then, is not part of the base?

Mr. Leonard Lyon: No, it is not. It is on the base. [22]

A substantially uniform metallic strip is shown in the pink color, and is fed into the machine between the ram and the base by the feed rolls

shown in blue on the chart. The feed rolls are in blue and they are feeding in this strip of flat, hard metallic strip, either of steel or bronze, which is to be formed into the zipper elements which are to be mounted on the tape.

You will notice that there is a single ram in this machine, and this single ram on a single movement downwardly functions to form the head and the recess to hold the strip in place by reason of the forming of the head and recess, and with the strip thus gripped to clamp the element on the edge of the tape as the element at the end of the strip is severed from the strip.

Now, the ram carries one part of the recess and projection-forming tool. You will notice the illustration on the strip, the full line black projection has been fully formed by a previous stroke of the ram. The dotted one next adjacent it to the left is the one that is to be formed by the next operation of the ram. The ram carries one part of the recess and projection-forming tool, one part of the cut-off tool, and closing jaw driving means all acting together when the ram descends. The base of the machine carries the other part of the recess and projection-forming tool, the other part of the cut-off tool, and a pair of closing jaws immediately at the [23] position of the cut-off tool, and arranged on either side of the tape and slidable toward each other for closing the fastener element upon the edge of the tape as it is being separated from the strip.

You will note that the closing jaws are yellow

elements and are referred to in the claim as a pair of jaws on the base, element No. 6. Each closing jaw, driving means on the ram, has a cam face that has direct engagement with the corresponding cam face on the corresponding slidable closing jaw to actuate the jaws on the single downward operation of the ram.

The tape is fed in a fixed path past the end of the feed strip. The tape is shown in green, and the arrow to—there is no arrow to the tape, but there is an arrow to, for means for feeding a tape, element No. 4, and that is shown at the upper part. The tape itself is the green material.

The Court: The tape apparently has——

Mr. Leonard Lyon: Has a bead on it.

The Court: Has a bead.

Mr. Leonard Lyon: Has a bead, and the zipper elements are clamped around that bead.

The tape is fed in a fixed path past the end of the feed strip where it always remains in position to be straddled by the opening legs of the next element while the element is still part of the feed strip. Thus the metal strip itself, [24] following Poux' idea, forms a handle for complete and accurate control to position the elements in precise location on the tape. The metal strip not only is held in this position by the strip feeding means, but is also held in vise-like action by the closing of the forming tools on the strip to clamp the strip in place immediately at the position of the cut-off tool and while the element is still a part of this strip.

The Court: When does the cutting take place?

Mr. Leonard Lyon: The patent says that it takes place simultaneously with or substantially simultaneously with the closing of the jaws to clamp the element on the tape.

The beauty of this whole arrangement, your Honor, is that you have control of this element, never lose control of the element that is going to be put on the tape. You always have it oriented so that you get the proper alignment on the tape, and there is no misalignment of one element as compared to another. And to assure that you have complete control of this forward element on this handle at all times.

The metal strip is not only held—going back a moment—the metal strip itself forms a handle for complete and accurate control to position the element in precise location on the tape.

That was Poux' idea, but he didn't know how to build a machine that would really do it. [25]

The metal strip not only is held in that position by the strip feeding means, but is also held in vise-like action by the closing of the forming tools on the strip to clamp the strip in place immediately at the position of the cut-off tool, and while the element is still a part of the strip. The element itself that is to be severed from the strip is supported on the top flat face of the cut-off tool that is carried by the base. The cutting cut-off tool acts against the strip to initially press the element against that flat top face while the clamping jaws immediately at the cut-off tool engage and close the legs of the element on the tape.

Your Honor has undoubtedly noted that the cut-off tool in this machine is carried by the ram and moves downwardly, not horizontally, and it does not cut out any material, which is waste material, but cuts out actually the top part of the zipper element, and in such a configuration that it has formed the jaws of the next succeeding element, and that is done by a downward stroke from the ram, the same stroke that is forming the projection and recess.

This new association of the forming, cut-off, and clamping-on tools all acting together in a high speed machine so that while they form, cut and close the element upon the tape, they also positively clamp in a vise-like grip and rigidly hold the element at the critical movement when the element is being applied to the tape on the tape side of the [26] cut-off tool. At the very same moment the forming tools immediately at the cut-off tool are clamping and rigidly holding the strip on the other side of the cut-off tool. The cut-off tool itself acts between these rigidly held portions of the strip to maintain complete control of these tiny fastener elements, established while the fastener element remains a part of the strip, and insure their correct formation and application to the tape.

So far as infringement of this patent is concerned, your Honor, that is illustrated by plate No. 3 of this chart, and I am not certain whether the defendant denies infringement. We have taken pre-trial depositions, we have inspected the defendant's machine, we have photographs of their machine,

we have drawings of their machine here. The defendant's principal officer has been examined by pre-trial examination. He has admitted that these claims element for element read on the defendant's device, and I notice that in the defendant's pre-trial brief, which was just filed with your Honor, there is no discussion of or denial of infringement, so I don't know for sure, although their answer denied infringement, I don't know whether infringement is going to be contested in this case or not. But we will present the drawings and photographs, and our expert who examined the defendant's machine will explain them to your Honor.

The issues then are that the defendant has charged that [27] the patent in suit is invalid in view of certain prior patents that are set up in the pleadings. He claims that he does not infringe. To that extent this is an ordinary patent case.

Then the defendant files a counterclaim charging the plaintiff with violating the anti-trust laws. The counterclaim is one for damages. The defendant contends that he has been injured by the alleged violation of the anti-trust laws, and he seeks treble damages.

He also seeks an injunction, but he does not allege in his pleadings that the so-called anti-trust violation is of such nature as constituted an offense to the patent suit.

The anti-trust charge begins with an assertion that the plaintiff is monopolizing the slide fastener business.

The plaintiff has a substantial business, but noth-

ing like a monopoly, and there are countless numbers of competitors in the business.

Then the counterclaim attempts to assert that certain contracts made by the plaintiff constitute predatory practices or restraints.

In the first place, the contracts, most of them, the serious ones, that the defendant seems to rely on, have long since been terminated and are no longer in existence. But, on the other hand, I have examined those contracts and I can't see the slightest justification or basis for a charge that [28] there is any predatory practice involved in any of them. So we will meet, as best we can, the defendant's counterclaim in the light of whatever he presents in support of it.

Thank you.

The Court: Mr. Mockabee do you want to make an opening statement now, or wait?

Mr. Mockabee: I would rather wait, your Honor, until I present my case.

The Court: Are you contending that there is no infringement by defendant's structure?

Mr. Mockabee: I will briefly summarize it in a hurry. Specifically, non-infringement of claims 1 through 4 in Poux, as I remember, and as I recall it there was reference to the manner in which Silberman claims the means for performing all operations on the feed member immediately at that position, that is, the predetermined position of the tape. I may not have said in so many words that we did not infringe it, but we have pointed out, I think, and intend to point out, that Silberman does not

perform all of his forming operations immediately at that position. And by comparison with those phases of the two machines, Silberman and the defendant's machines, with regard to the formation of the projections, there is a great similarity, and neither do we perform all of the element-forming operations at the predetermined position right at the tape. [29]

But I think there is a discussion of whether or not these claims are infringed or a major part of them.

The Court: Infringement then is an issue?

Mr. Mockabee: Yes, sir.

The Court: All right. You may proceed, Mr. Lyon.

Mr. Leonard S. Lyon: Mr. Doble.

WILLIAM A. DOBLE

called as a witness by the plaintiff, being first sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: William A. Doble.

Direct Examination

Q. (By Mr. Lyon): What is your age, Mr. Doble? A. I am 60.

Q. What is your occupation?

A. I am a mechanical engineer specializing primarily in patent studies, investigations and appearing as an expert witness.

Q. For what period of time have you been so engaged?

(Testimony of William A. Doble.)

A. For somewhat over 25 years.

Q. You have testified as an expert witness in many cases in this and other courts, patent cases, have you not?

A. Yes, sir, I have.

Q. What training have you had in mechanical engineering? [30]

A. Well, to start with my father ran a manufacturing plant and I spent my vacations working in the plant.

At about the age of nine I was provided with a lathe and used it extensively and still have a lathe and use it together with many other machine tools which I use extensively.

My high school training was at the Cogswell Polytechnical College of San Francisco where I took the usual or most of the usual shop courses. However, because I had a better equipped shop than the school I obtained full credit for machine shop work.

I later went to Stanford University and majored in mechanical engineering.

During the time I was in Stanford University the first world war broke out and the engineers at that time were urged to take an examination for commissions in the Ordnance Department of the United States Army.

I took the examination. I was commissioned as a first lieutenant and shortly afterward was sent to the plant of the Bethlehem Steel Company at South Bethlehem, Pennsylvania where I took training in ordnance materiel.

(Testimony of William A. Doble.)

They were making a certain large cannon for the British government and were going to build a large cannon for the American government.

The cannon included both the barrel and the carriage mechanism. [31]

Later I was sent to the American Car and Foundry Company in Detroit where they were making ammunition vehicles as well as shells.

And then later to the Harvey (phonetic) district of the Chicago Ordnance Office and there was Army inspector of Ordnance for three relatively small plants.

They were making railroad equipment, gasoline engines, artillery wheel carts and other sundry items which I had a complete supervision over.

During my time in college I was also doing development work on steam power plants and hydrocarbon fuel burning apparatuses, which my brother carried on while I was in the service.

On returning to San Francisco the development work had progressed to a point where I did not return to the university to finish my engineering course but continued with the development work which had been started while I was in college.

That development brought on a number of inventions, a few of my own, and I became acquainted with patents and that time or shortly after that time I studied the leading texts of patents and patent procedure and eventually when two of our patents became involved in litigation I was designated as the one to prepare the case for trial and on the

(Testimony of William A. Doble.)

completion of the case was requested to expert some cases for the firm of Lyon & Lyon, which I did, and have proceeded in that [32] business more or less since, excepting for the time I spent during the second world war as a major in the Ordnance Department of the United States Army.

Q. (By Mr. Leonard S. Lyon): Now, do you have an office? A. Yes, sir.

Q. Where is it located?

A. It is located in Menlo Park, California.

Q. Are you in the regular employ of any firm or concern or are you an independent consultant?

A. I am independent consultant.

Q. Have you been retained by the plaintiff in this case to testify as an expert witness on its behalf? A. Yes, sir, I have.

Q. And have you studied and do you understand the disclosures of the two patents here in suit? A. Yes, sir.

Q. Are you a licensed engineer in the State of California?

A. Yes. My registration number as a professional mechanical engineer in the State of California is 4,951.

I am also a member of the American Society of Mechanical Engineers.

Q. Will you just give the court an outline of what you have done in preparing to testify as an expert in this case on behalf of the plaintiff? [33]

A. I studied the patents in issue.

(Testimony of William A. Doble.)

I have read and studied the file wrappers of the patents.

I visited the defendant's plant and inspected and directed the taking of photographs of defendant's machines, and also directed the making of drawings of his machine.

Later I went to Chicago—went to Cleveland and there studied the operation of the Silberman machine in the Wilson plant of the Talon Company in Cleveland, Ohio.

Q. When were you retained by the plaintiff in this case?

A. My best recollection is it was sometime just prior to or during the early summer of 1951.

Q. Will you turn now to the first patent in suit, the '017 patent, and describe and explain to the court the method of making separable fasteners described in that patent and illustrated in the drawings of that patent, and also explain the operation and construction of the machine purported to be shown in Figures 2 through 7 of that patent insofar as there is a machine there shown?

A. Yes, sir. I have before me patent '017.

The Court: Let us have that patent in evidence while we are about it. It will be Plaintiff's Exhibit 1 in evidence. Is that satisfactory?

Mr. Leonard S. Lyon: Yes, your Honor. I will offer a copy of the Poux patent 2,078,017 as Plaintiff's Exhibit No. 1.

The Court: Separately or are you going to offer a book of patents? [34]

(Testimony of William A. Doble.)

Mr. Leonard S. Lyon: No, I think we will put these two patents in separately.

The Court: Exhibit 1 received in evidence and the clerk will mark it later. You may go ahead.

The Clerk: Plaintiff's Exhibit 1 in evidence.

(The document referred to, marked Plaintiff's Exhibit 1, was received in evidence.)

The Witness: I have Plaintiff's Exhibit 1 before me, namely the patent to Poux, '017, and I would like to read the first paragraph from this Poux patent which is entitled "Method of making separable fasteners."

The first paragraph reads as follows:

"The present invention is directed to the method of making slide fastener members, particularly of the type having attaching jaws, or prongs which are set astride a fastener tape and secured thereon and which members are provided with interlocking projections and recesses at their free ends. Heretofore the common practice of making such members has been to form the members individually and then secure them on the tape. In the present invention a plurality of members are formed with recesses and projections on opposite sides of each member, the exterior edges of the members fashioned, the [35] interior surfaces of the prongs or jaws, shaped and the members severed. Preferably the severance is between the jaws of one member and an adjacent member and the members are preferably severed as one of the members is united with the tape. In this way the fabrication is simplified,

(Testimony of William A. Doble.)

the operations made more certain and refinements in the members may be accomplished.”

Now, referring to the drawing, Figure 2 is entitled “A perspective view, parts being broken away, showing the apparatus,” and includes a pair of feed rollers which are indicated by the numeral 9.

The numeral 9 appears just opposite the lower end of the lower feed roller.

The two feed rollers are grooved to receive a round bar.

I will diverge just a moment to Figures 3 and 4. Figure 3 is a side elevation of the closing mechanism and Figure 4 is a modification of the jaw closing dies.

The reason I diverted to these two figures is to show that in one case a round bar is used, and this is a round bar in cross section, and in the other figure, namely Figure 4, a bar having a square cross section is used so that the machine shown in Plaintiff's Exhibit 1 contemplates the use of either a bar having a round cross section or a square cross section. [36]

If a square cross section were to be used, the bar having such section, would pass through a similar pair of feed rollers—that is the same as the feed roller 9 excepting that the feed roller 9 would have a square or rectangular section on their peripheries where they engaged in the bars instead of a half circular periphery slot—it would have a square rectangular slot about the periphery of the feed rollers.

(Testimony of William A. Doble.)

The Court: Is Figure 28 supposed to be the roller in Figure 3? What do you call those?

The Witness: Those, your Honor, are the closing dies which close the legs or jaws of the zipper element on the tape.

The Court: Are you talking about Figure 3?

The Witness: Figure 3 and Figure 4 show the closing jaws which close the legs of the element on the tape.

The Court: I thought you were referring to Figure 3 to demonstrate the use of the square bars as well as the round bars.

The Witness: Yes, your Honor. The square bar is shown in Figure 4 whereas the round bar is shown in Figure 3.

The Court: Well, I don't understand——

The Witness: I might point out to your Honor——

The Court: I don't understand what 28 has to do with it.

The Witness: It doesn't, your Honor. It is just [37] pointing out—the patentee defines that you may use either a round bar or a square bar and those figures illustrate both the round and the square bar and in the specifications on page 2, column 1, commencing at line 10 the patentee states:

“While the rod 3 so far as described is round in cross section and I have referred to the recess and projection sides of the member as that portion of the member involving the surfaces included circumferentially in the parts occupied by the recess

(Testimony of William A. Doble.)

and projection and extending axially therefrom in Figure 4 I have shown the red in square form."

And then continuing the quotation:

"This may be used where it is desired to have interlocking members of this cross section and the dies 28 under these conditions will fashion the jaw end of the members as desired. As indicated in Figure 4 it would give the jaw end of the clamps a round cross section at the free end of the member may retain a shape having parallel plane sides for the recess and projection."

In other words what I was pointing out to your Honor, is that the inventor might use either a round or a square bar.

The Court: All right, I see it now.

The Witness: And provide the necessary or suitable change in the feed rollers to accommodate either a round or a square bar. [38]

The Court: I see where 28 comes in now. You may go ahead.

The Witness: The round bar in Figure 2 is designated by the numeral 8, which numeral appears just ahead of the front edge of the feed rollers.

The Court: You mean the bar 2 in Figures 3 and 4 is 8 in Figure 1?

The Witness: No, your Honor. The bar 2 is the rib of the green tape—well, you don't have a green tape there, but it is the rib, as you will notice, at the top of Figure 2 after the tape has fed through the upper feed roller 12.

(Testimony of William A. Doble.)

There is a numeral 2 which indicates the rib of the tape to that vertically extending member which is designated by the numeral 2 in Figures 3 and 4 and is the edge of the tape upon which the element is to be fastened.

And the elements 28 are shown at the very end of the red bar just at the location or position which they would occupy when closing the legs of the members about the rib 2 of the tape.

The rod is fed intermittently through the feed roller 9 and we will assume that the rod has moved to its first position upon which the dies operate upon it, and now I will point out the dies and the forming mechanism as shown in Figure 2.

Directly above the rod 8 is a head designated by the [39] numeral 14. It is a rectangular head directly above 8.

To operate the head 14 is a plunger 15 which extends upwardly from the head and that plunger may be actuated by an ordinary punch press, as the inventor states in his specifications.

That head 14, in other words, is mounted for reciprocation up and down in a particular manner.

The under surface of the head 14 carries a recess punch 17. That recess punch co-operates with an opening 19a, which is formed in the die block which in turn is mounted upon the base of the machine and remains stationary so that during the downward movement of head 14 the recess punch, which is rounded on the rod engaging end, pushes a recess into the top surface of the rod.

(Testimony of William A. Doble.)

Now, the recesses are designated by the numeral 16 and are shown as the first disfiguration of the rod.

The Court: 6 instead of 16.

The Witness: 6 I meant, your Honor, yes. 6. At the same time the recess 6 is being formed by the recess punch 17 a projection 5 is punched down into the opening 19a.

Also carried by the head 14 is a key hole punch or key hole shaped punch 19 which is directly in back or ahead of the recess punch 17.

The die block, and for the purpose of illustration I will refer your Honor to Figure 5, the die block being Figure 6, [40] which is a planned view of the punch receiving dies and also to Figure 5 which is the bottom view of the punches.

Now, the punch 19 which is carried by the underside of head 14 is in the shape of a key hole and is shown in Figure 6. There is a key hole opening illustrated at 19a.

There seems to be—I pointed out previously that the opening 19a in Figure 2 was the opening in which the projection 5 was formed. However, in referring to Figure 6, although there was not a designation for the opening in which the projection 5 is formed, the patent refers to the recess in the die block by the numeral 18 and your Honor might put on that forward round hole that is shown in Figure 6 ahead of the key hole slot 19, the numeral 18 which the patentee refers to as the opening in which the projection 5 is formed.

(Testimony of William A. Doble.)

Now then during the stroke of the head 14 downwardly a key slot is pushed through the rod 8 and that key slot is the form as shown in Figures 5 and 6. The material is pushed right through the rod and passes down through the opening 19 clear of the die block or lower die 10.

Also the reciprocating head 14 carries two punches 21.

The punches 21, that is the shape of the punches 21 are clearly shown in Figure 5 which is the lower view of the head 14. And turning to Figure 6, which is the planned view of the lower die block, opening 21a on each side of the slot through the lower die block are shown in the form in which the metal is punched out or pushed out of the sides of the rod 8. [41]

The next die is carried by, or the next punch that is carried by the reciprocating head 14 is designated by the numeral 27 and is a spreading punch. It acts after the element which has been attached onto the tape and cut off from bar 8 to spread the key hole slot into the shape it is shown in Fig. 7. So that the jaws or legs 26 of the element are opened sufficiently to permit the element to be passed over the beaded or rib edge of the stringer 1 or tape 1 into position to be closed upon the rib of the tape.

Now, as all of the punches 17, 19, 21, and the spreader 27 are carried by the reciprocating head, during the downward movement of the reciprocating

(Testimony of William A. Doble.)

ing head 14, the recess and projection will be formed, the keyhole slot will be punched through the bar, the cut-outs at each side of the bar will be made, and the keyhole slot will be spread to open the jaws for movement onto the bead of the tape. Then the reciprocating die returns to its elevated position leaving any contact it might have had with the rod 8.

The next operation is performed by a pair of cutters, they are side cutters, and the one on the right-hand side of the bar is designated by the numeral 23, and the die forming that cutter is on the opposite side of the bar and is designated by the numeral 25. That cutting mechanism operates on the side of the bar and acts to cut the notched-out portions of the bar at the end of the keyhole slot, so that after the [42] cut is made the end of the keyhole slot is open. The cutter 23 is shaped as shown at 23a, as having a convex cutting surface. The purpose of that, the inventor states, is to give the forward end of the rod a rounded surface.

And if you will refer to Fig. 1A, which is a side elevation of one of the interlocking members, clamped upon the stringer, you will see at the forward end of that interlocking member, which the patentee designates by the numeral 3, the numeral 24, which indicates the rounded end, which was formed on the interlocking member 3, because of the particular shape of the cutter 23.

And as I pointed out, the jaws after the head 14 have returned to their position, that is, the jaws

(Testimony of William A. Doble.)

of the then leading interlocking member 3, and I will refer now to Fig. 7, are open.

The next step——

The Court: I didn't follow that.

In other words, I don't follow where this spreader 27 comes in. Obviously the spreader 27 would have to do its spreading after there had been a cut-off.

The Witness: That is correct, your Honor.

The Court: And after the die 23 and 25 in Fig. 2 had done the cutting.

The Witness: That is correct, your Honor.

The Court: On the other hand, the die 27 seems to be [43] attached to the block or head 14.

The Witness: Yes, your Honor.

The Court: And would come down at the same time as the other punches.

The Witness: That is correct, your Honor. But they come down after the leading element—the previous leading element has been cut off. The cutting off action in this patent is not accomplished during the downward stroke of the head 14. The cutting off action takes place after the head 14 has been moved upwardly to its upper limit of travel. So that you have the end of the slot, key slot 19, or key slot 20, open. The cutting elements are then moved outwardly from the bar, after they finish their cutting action, the rod 8 has not been advanced to engage the tape, so it is in the position as shown in that figure, if we cut off the leading element which is in engagement with the tape.

Then the head 14 moves downwardly, the spread-

(Testimony of William A. Doble.)

ing die or spreading punch 27 enters the keyhole slot and spreads the keyhole slot to the shape as shown in the forward element in Fig. 7.

Now, in Fig. 7 the element has already been moved forwardly to engage the tape, but after the operation of spreading the member that had been spread would be in the position of the left-hand element in Fig. 7, because the front element would have been cut off, the spreader could come down, spread [44] the legs or jaws, and after that spreading operation then the feed rollers 9 would be actuated to move the rod forwardly until those spread jaws or legs engaged the rib or head edge of the strip of the stringer or tape.

So that as I was saying, the keyhole slot has been opened. The next step is to actuate the feed rollers 9 to advance the rod until the spread jaws engage the rib 2 of the stringer 1.

Does your Honor follow that?

The Court: Yes, I follow that.

The Witness: Now, the rod is advanced when the head 14 has been returned to its upper limit of travel. And after the rod has advanced and the first interlocking member 3 is in engagement with the stringer as shown in Fig. 7, then the closing dies 28 are actuated to close the jaws 26 upon the rib of the stringer. Simultaneously therewith the cutter 23 in cooperation with the die 25 operate to cut off that finished element which has now been securely fastened onto the tape in correct position.

In this operation your Honor will observe that

(Testimony of William A. Doble.)

the rod which extends rearwardly from the position in which the jaws 26 are to be closed about the rib of the stringer 1, acts as a handle to maintain control of that interlocking element 3 until it is firmly clenched upon the rib of the tape. And after it is securely fastened to the tape, then it is cut [45] away from the handle.

After the interlocking element has been cut from the handle, the legs have been clenched about or clamped about the rib of the stringer, then the feed rollers 12 are actuated to lift the stringer upwardly so as to lift the interlocking member 3 that had just been clamped on the tape to the position of the element, interlocking element 3, in Fig. 2, which is just above the element which is about to be clamped upon the tape.

The Court: And rollers 13 probably work at the same time as 12?

The Witness: Yes, except they work differently. They work in this way: The rollers 12 act to move the tape intermittently. The rollers 13 act to tension the tape, to hold the tape taut, and also to keep it in perfect alignment at the end of the rod, so that the spread jaws will——

The Court: And the notches in rollers 12 are the device or means by which this intermittent motion is obtained?

The Witness: Yes, your Honor.

The Court: No notches in 13?

The Witness: No notches.

The Court: All right. It is 12 o'clock. We will take our adjournment until 2:00 o'clock.

(At 12:05 o'clock p.m., a recess was taken to 2:00 o'clock p.m.) [46]

Tuesday, March 1, 1955; 2:00 P.M.

The Court: You may proceed.

WILLIAM A. DOBLE

a witness called by the plaintiff, having been previously sworn, resumed the stand and testified further as follows:

Direct Examination—(Continued)

Q. (By Mr. Leonard S. Lyon): Will you please resume your testimony, Mr. Doble?

A. Yes, sir. Referring again to Plaintiff's Exhibit 1, Poux patent '017, I would like to summarize the operation of the mechanism shown in Figure 2 of the Poux patent.

In Figure 2 the rod is shown extending from the feed roller 9 to the edge of the tape.

At this particular portion of the operating cycle the feed rollers 9 are not operating. The rod 8 is stationary.

The head 14 is up at the upper limit of its travel.

The cutters 23 and the closing dies 28 have not as yet been operated so that the next cycle of operation would include causing the cutter 23 in the closing dies and the closing dies to operate.

They operate while head 14 remains stationary.

(Testimony of William A. Doble.)

The closing die closes the jaws 26 on the rib of the tape.

The cutter 23 cuts the finished element from the rod. [47]

The cutter and closing dies return to their retracted position as shown in Figure 2.

The next operation is for the feed rollers—for the tape to advance, the tape with a newly attached element up one step in its operation. Thereafter the tape remains stationary.

The rod at this time remains stationary and the next operation is for the head 14 to be driven downwardly into its piercing and forming operation with the rod, the downward movement of the head causes simultaneously, practically simultaneous action of the punch 17.

The key hole slot punch 19, the side punches 21 and the spreader 27, and that operation takes place, as I say, while the cutter and the closing dies 28 remain stationary. The downward operation of the head 14 forms the recess and projections—recesses 6 and the projections 5, forms the key hole slot, punches the rounded sections on each side of the rod and opens the key hole by means of the spreader 27.

All of those operations take place during the downward movement of the head 14. [48]

Then the head 14 moves upwardly to its upper position and remains stationary, out of contact with the rod.

The next step in the operation is for the feed-

(Testimony of William A. Doble.)

ing rolls 9 to push the rod forwardly a predetermined amount until the open jaws 26 straddle the rib 2 of the stringer 1. Thereafter, as I pointed out, the cutter 23 and the closing dies 28 work in substantially simultaneous operation to clamp the element to the tape and sever that element from the rod.

Now, the rod during the closing of the jaws 26 acts as a handle to hold the element to be cut from the rod in perfect alignment, or at least in alignment with the rod, and in correct position on the tape.

The Court: Why wouldn't this machine work?

The Witness: I think it would work, your Honor. It will work on soft metals. I don't think it will work on hard metals, because of the very small size of the keystone punch.

The Court: The size of these holes, the shape of the holes, wouldn't make any difference, insofar as the device was concerned? I mean if the patent taught a certain device and taught a certain size hole, it wouldn't make any difference what size hole you made or what size shape?

The Witness: That is correct.

I believe the machine of the structure shown in the Poux patent would work.

Q. (By Mr. Leonard Lyon): Would it be practical? [49]

A. I don't think it would be commercially practical.

Q. What objection would there be to punching

(Testimony of William A. Doble.)

of the key hole slot and the formation of the scrap metal that is involved in that operation, if any?

A. Well, it is not desirable to have any scrap. The less scrap you have, the cheaper the elements can be made.

The material used in making the elements, true, is small, but when you consider the volume in which these elements are turned out, the overall cost of the material runs up considerably.

Now, you have a waste of material in making the keyhole. That has two disadvantages. One is wasting the material, and the other is disposing of that little waste piece. They are very small pieces, and if they get mixed up with the other dies, they are liable to cause them to fracture. In fact, that is one of the problems in all of these machines, is to get rid of scrap, so that it does not cause the punches to break or other unfortunate happenings of the mechanism.

Q. Would this machine as shown in the drawings of this '017 patent be practical for operation on flat metallic strips of the kind of metal that is customarily used in the industry?

A. No, it would not.

Q. Why not?

A. Because if you take a strip of metal, such as I have in mind, which is similar to that used in the manufacture of [50] commercial zippers, and try to——

Q. I think we had better identify that strip that

(Testimony of William A. Doble.)

you are using for illustration as Plaintiff's Exhibit No. 2.

The Court: Plaintiff's Exhibit 2 received in evidence.

(The exhibit referred to was received in evidence and marked Plaintiff's Exhibit No. 2.)

The Witness: Plaintiff's Exhibit 2 was given to me by Mr. Lipson at the Union Slide plant. I might add. So that, as I was saying, if a strip like Plaintiff's Exhibit 2 were used in the machine, such as disclosed in Plaintiff's Exhibit 1, and the cutting off dies or shearing members approach from the side, they would have a tendency to bend or buckle the material, deform it to the point where it would not make a commercial structure.

Q. What is the situation at the moment when the members 27 are spreading the jaws of the zipper element, with respect to whether or not the zipper element clamped on the tape is still in position to give you the handle effect?

A. May I have that question read, please?

Q. Maybe I can straighten the question out a little bit.

At the time when the spreader elements 25 function, has the more forward zipper element been cut off from the rod?

A. Mr. Lyon, you said——

Q. 27. [51]

A. Spreader 27 when it operates, the forward element as shown in Fig. 2 of the Poux patent has been cut off and moved up to the next position on

(Testimony of William A. Doble.)

the tape. That is, the tape has been moved up so that it carries that united element or fastener element up out of the way from the end of the rod.

Q. And there is no element between the element on which the jaws are being spread and the tape, is that correct?

A. That is correct, sir.

Q. Does that mean that the intended control that is provided by the handle has been lost to some extent?

A. Yes. It means this—I wouldn't say it had been lost; it never had it in the sense of confining or clamping the strip down during the cutting of the most forward element from the rod. Because at the time the cutting action takes place, the head 14 is in its uppermost position, and therefore the spreader is not in engagement with the top surface of the rod, nor is any of the other punches in engagement with the rod, so the rod is free and could bounce up or down with relation to the supporting guideway through the lower die. [52]

Q. How many operations of the ram are required with the apparatus of the '017 patent to produce all of the formations of the zipper element—that means the recesses and projections, the key slot, the cutting off, the clamping and the spreading of the jaws of any one zipper element. How many operations of the ram are required for each zipper element to complete those operations?

A. I would say three operations of the ram.

Q. With regard now to the individual zipper

(Testimony of William A. Doble.)

element what happens during the first operation of the ram?

A. The first operation of the ram punches the recess and forms the projection, punches the key hole and takes the little rounded slices off the sides of the bar and spreads the foremost key hole.

Q. No, I am talking about—if you will follow my question, I am talking now about one zipper element. I am trying to make the question simple.

The first operation of the ram with regard to that zipper element forms the projections and recesses, is that correct?

A. And the key hole slot.

Q. And the key hole slot?

A. Yes, sir.

Q. The same operation forms the key hole slot as forms the projections and recesses?

A. Yes, sir. [53]

Q. Now, what is performed on that particular element by the second operation of the ram?

A. The punches 21 cut the little rounded sections out of each side of the zipper or out of each side of the rod 8 for that particular element.

The Court: That is done at the same time the recesses are punched and the keyhole slot is punched?

The Witness: But on the advanced element, your Honor.

The Court: Well, go ahead.

Q. (By Mr. Leonard S. Lyon): Now what hap-

(Testimony of William A. Doble.)

pens to this same individual zipper element on the third operation of the ram?

A. The spreading punch 27 spreads the jaws 26 so that they will pass over the rib 2 of the tape.

Q. Now, as I understand you, the operation of cutting that zipper element off of the rod and clamping it on the tape is not performed by the ram, is that correct?

A. That is correct. They are formed during the dwell of the ram as the patentee states on page 1, column 2.

Q. You have mentioned the fact that the cutters in this device would deform a flat metallic strip if you tried to operate this machine with a flat metallic strip. What objectionable effect would that have on the positioning of the zipper element on the tape, if any?

A. I am afraid I didn't get the question. [54]

Mr. Leonard S. Lyon: Will you read the question, please?

(Question read.)

The Witness: It would tend to distort it or push it to the side. It would not only distort it but also tend to push it sideways.

Q. (By Mr. Leonard S. Lyon): Is that permissible in the manufacture of these zipper strings?

A. No, sir, it is not.

Q. Why not?

A. Well, because it throws them out of alignment with the tape and they should be aligned with the edge of the tape.

(Testimony of William A. Doble.)

Q. If they are not so aligned what difficulty is experienced in trying to use the zipper made from such strings?

A. They would not properly line up with the other—with the opposite stringer with which they are to be assembled.

Q. And would they therefore fail to function?

A. Well, they might not function properly—they might function but I don't think it would be a satisfactory union of the two.

The Court: When you talk about three operations, actually if the machine shown by patent '017 was in operation upon each stroke of the head there would be one zipper element made?

The Witness: That is correct, your Honor.

The Court: Upon each movement of the cutting [55] bar 23 there would be one made?

The Witness: That is correct, your Honor.

The Court: And each movement of the element 28 to clamp it on the bead would be one made.

The Witness: That is correct, your Honor.

The Court: So actually there are three things that happen, but they happen only once as to each element made?

The Witness: That is correct.

The Court: The head comes down?

The Witness: Yes.

The Court: And the cutting bar and the 28, whatever you call it, wedges the teeth on which operate together, if you want to call those three things or maybe two things—the head comes down

(Testimony of William A. Doble.)

and the cutting bar and compressor moves across thereafter and a zipper is made?

The Witness: Yes, with one exception, your Honor. At the time the cutting off action takes place and the time the legs are squeezed onto the tape the head has moved up out of the way because otherwise you would have a conflict between your spreading plunger and the cut-off blade.

Q. (By Mr. Leonard S. Lyon): Do you find that expressly indicated in the patent specifications?

A. Yes, sir.

Q. Where?

A. On page 1, column 2, commencing at line 28. I will [56] read it as follows.

The Court: Will you give that to me again?

The Witness: Excuse me, your Honor. Page 1, column 2 and line 28:

“With the next forward movement of the rod the keyhole shaped openings are advanced to the position opposite the cutter 23. This cutter operates in an interval or dwell between the forward movement of the rod and the descent of the punches.”

So it indicates——

Q. (By Mr. Leonard S. Lyon): Does the drawing in the '017 patent illustrate how or by what means either the cutters 23 or the closing members 28 are operated?

A. No, sir, it does not.

Q. But you know they are operated by the ram from the statement that you have just read from the specifications?

A. Yes, sir.

(Testimony of William A. Doble.)

Q. Is that correct?

A. Yes, sir; because when the cutter and the closing die 28 are operated the ram is stationary, not moving, so it could not cause the operation of the cutter and the closing die.

Q. This patent purports to cover a method and the apparatus described in the patent is merely by way of aiding [57] one in practicing that method?

Can you understand the method that is described in this patent independently of the apparatus?

A. Oh, yes, definitely.

Q. And do you believe the apparatus is workable but not practical, is that right.

A. That is correct.

Q. Does the patent actually describe the complete machine?

A. No, sir, it does not.

Q. You have referred to one sentence in the paragraph commencing at line 14, column 2 of page 1 of the patent.

I wish you would take that paragraph which purports to follow the operation of the apparatus and go through it for the court and relate it to the operations that you have described.

I find some difficulty in following this paragraph and I think you should dwell on it somewhat with the court.

The Court: You mean line 14, column 2, page 1?

Mr. Leonard S. Lyon: Yes, your Honor.

The Witness: Yes.

(Testimony of William A. Doble.)

Q. (By Mr. Leonard S. Lyon): Maybe you had better start at line 6 in column 2.

A. Referring now to Plaintiff's Exhibit 1, the patent to Poux, '017, and reading from page 1, column 2, starting at line 6 as follows: [58]

"The punches are carried by a head 14 from a plunger 15. This plunger is operated through any ordinary punch press (not shown). A punch 17 is carried by the head 14 and upon the depression of the head indents the rod forming the recess 6. At the opposite side of the rod, a projection 5 is formed, the die 10 being provided with a recess 18 to receive the projection."

I think it is clear down to that point. [59]

The Court: That is clear to me. All right.

The Witness: Fine. Thank you, your Honor.

"With the next advance of the rod a key-hole shaped slot 20 is formed by a similarly shaped punch 19"—

Q. (By Mr. Leonard Lyon): Stop right there. I think somebody said that the recesses and the keyholes were punched by the same operation of the ram.

A. That is correct.

Q. Is that the way it is described here?

A. No, it is not.

Q. Well, is there an error in the testimony or in the text of the patent?

A. It appears to be in the text of the patent.

Q. Proceed.

A. However, as you read further down, I think it becomes clear what the inventor meant by that.

(Testimony of William A. Doble.)

He really means that the recess and the keyhole are put into that particular element of the rod during a single stroke of the ram or head 14.

Continuing reading:

“the punch extending through the material and forcing the same through an opening 19a in the die, this operation removing the intervening material between the jaws.”

Q. Is that the intervening material which you said was [60] objectionable in your prior testimony? A. Yes, sir.

“With the next advance of the rod punches 21 cut rounded notches in the rod at the rear of the keyhole slots.”

Q. There the text describes that those notches are cut by a third operation of the ram, does it not?

A. Yes, it does.

Q. Is that in accordance with your understanding of the machine from the drawing?

A. No, it is not.

My understanding is that on the first down stroke of the ram for a particular element, the depression, projection, and keyhole slot is formed. On the next down stroke of the ram the rounded side openings are cut from the sides of the rod.

Q. You are speaking now of the same zipper element?

A. Of the same zipper element, yes.

The Court: The text says, “at the rear of the keyhole slots.”

The Witness: Yes, your Honor.

(Testimony of William A. Doble.)

The Court: You would ordinarily think that the front end of this rod, the part of the rod that was progressing toward the apparatus, would be the front end of the rod. Actually, according to the diagram of the machine, 21 cut rounded notches are cut at the front of the keyhole slot. [61]

The Witness: That is the way it appears, yes, your Honor.

The Court: All right. Go ahead.

The Witness: "These notches, using the strip in the form of the rod shown, outline the exterior edges of the fastener members. The rounded notches formed by this action give a rounded end 22 to the members so that they may be more readily operated upon the slider. The punches 21 operate in die openings 21a. With the next forward movement of the rod the key-hole shaped openings are advanced to the position opposite the cutter 23. This cutter operates in an interval or dwell between the forward movement of the rod and the descent of the punches."

The Court: I think I understand it.

The Witness: "It has a concave cutting surface"—That is referring to the cutter.

"It has a concave cutting surface on one face and preferably a plane cutting surface 23a on the opposite face. It operates in connection with a die 25 at the opposite side of the rod. The concave cutting surface forms a rounded end 24 (see Fig. 1a) and the plane cutting face leaves the free end of the interlocking member square with the projection and

(Testimony of William A. Doble.)

recess sides of the member. The cutter 23 operates and severs jaws 26 of the second fastener element [62] from the end in Fig. 7 forming an open slot at their ends and in the same operation severs the end fastener element from the second one from the end in Fig. 7. A spreader 27 spreads these jaws with the next reciprocation of the head, shaping the jaws, particularly the inner edges of the jaws, to the form shown in Fig. 7. With the next forward movement of the rod these jaws are advanced into position over the rib 2 on the stringer and simultaneously with, or slightly before, the cutters operate to sever the member, closing dies 28 operate upon the open jaws to close them, pressing them into clamping engagement with the rib."

Q. (By Mr. Leonard Lyon): In one part of this specification or statement the author is describing the sequence of operations on an individual zipper element, whereas in another part of the statement he is describing the operation with reference to the foremost zipper element, which is to be cut off, is that not correct?

A. That is correct, except for one point.

He states that during one operation of the head 14 the depression and projections are formed only. That is, he only indicates that that one operation takes place, whereas, in fact, not only the depressions are formed, but the key-hole slot is also punched through the bar. [63]

Q. In answering the next question, will you divorce from consideration the details that you have

(Testimony of William A. Doble.)

been referring to of the operation of the apparatus, which is set forth in this patent, merely to illustrate how an apparatus might be provided to carry out the method, and devote your attention to the method that is patented in this patent. What would you say are the essential meritorious features of that method?

A. I would say the meritorious features of the Poux method reside in manufacturing the element on the end of a rod. Then using that rod as a handle or means to control the formed element, advancing that formed element or manufactured element into position maintained in correct position by the rod, and there fastened to the tape.

Q. Will you compare your last answer with what is set forth at page 2 of the patent, column 1, commencing at line 25?

A. Reading from the Poux patent '017, Plaintiff's Exhibit 1, from page 2, column 1, line 26.

The Court: This is claim 4?

Mr. Leonard Lyon: Line 26 on page 2, column 1.

The Court: All right.

The Witness: "It will be noted that while the rod is still integral the recesses and projections of the members are formed for a plurality of members [64] and the intervening material is removed forming the jaws, or prongs for a plurality of members and after completely forming this plurality of members one member is severed from another. Thus in the rod as shown recesses for three distinct members are formed and the exterior edges of these

(Testimony of William A. Doble.)

members are also formed. Jaw slots for three distinct members are formed while the parts are integral, and the inner surfaces of the jaws"——

The Court: "Exterior."

The Witness (Continuing): "and the exterior surfaces of the jaws, or the exterior edges on a plurality of the members are formed by cutters 21 prior to the severance of one of those members from another and the interior surface of the jaws is shaped by the spreader while the two last members are still united and the jaws are severed one from the other with the severance of one member from another. This affords a simpler manner of fabricating the members, maintaining them in proper relation and permits, if desired, a greater range of finishing of the members than with practices heretofore used. It also simplifies the transfer, or assembly to the tape and while in the present exemplification and preferably the jaws are moved to a position astride [65] the tape, in the broader phases of the invention it is only necessary that there should be relative movement of the jaws and tape to bring the tape within the jaws."

Q. (By Mr. Leonard Lyon): The paragraph that you have read dwells, in part, on the formation of a plurality of these zipper elements on a rod, and then using the rod to apply the endmost of those elements to the type? A. Yes, sir.

Q. On the other hand, the paragraph also describes a broader aspect of the method. In its broader aspect is it essential that there be more

(Testimony of William A. Doble.)

than one zipper element completed on the rod before that element is cut off and applied to the tape?

A. No, sir; it can be one or a plurality, it wouldn't much matter. The same advantage would be obtained in the operation of this particular method.

Q. Now, will you look at claim 17 of the patent and tell me whether or not in your opinion it refers to the broader or the narrower aspect of the method that I have just referred to?

A. It is directed to the broader aspect of the invention.

Q. In your opinion would that claim apply to the formation of a single zipper element on the rod and the cutting [66] off of that element before the completion of the next succeeding zipper element? A. Yes, sir, it would.

Q. I think now we will turn to the Silberman patent, if you will please do so. That is the '793 patent. And will you take the specification of that patent and the drawing and explain to the court the machine there described?

Mr. Leonard Lyon: I at this time will offer in evidence a copy of the patent to Silberman No. 2,437,793, granted March 16, 1948, as Plaintiff's Exhibit No. 3.

The Court: Received in evidence.

(The document referred to was received in evidence and marked as Plaintiff's Exhibit No. 3.)

(Testimony of William A. Doble.)

The Clerk: The metal strip was also in evidence, your Honor?

The Court: Yes, 2 was received in evidence.

Q. (By Mr. Leonard Lyon): In connection with that answer, Mr. Doble, in giving your answer you may for illustration use, to the extent that you desire, the chart which I previously handed to the court and referred to in my opening statement, and which sets forth in plate 1 the elements of claim 40 of the Silberman patent, and in plate 2 the corresponding parts of the machine illustrated in the Silberman patent.

And at this time I will offer in evidence the chart as [67] Plaintiff's Exhibit No. 4.

The Court: Exhibit 4 received in evidence.

(The chart referred to was received in evidence and marked as Plaintiff's Exhibit No. 4.) [68]

The Witness: The Silberman patent, Plaintiff's Exhibit 3, contains 10 sheets of drawings and I think it might be well if we just run through the drawings first so I may point out a general picture of the machine and of the various parts that comprise that machine.

Figure 1 is a side elevation—elevational view of the apparatus embodying the Silberman invention. It includes practically the entire machine above the legs.

Figure 1A is a planned view of a portion of a stringer that we have seen also in the Poux patent '017.

(Testimony of William A. Doble.)

Figure 2 is an elevational view of the apparatus as shown in Figure 1. In other words it is looking toward the feed wire side of Figure 1 and has left off from Figure 1 the wire feed reel as it appears in Figure 1.

Turning to the next sheet of drawings, Figure 3 illustrates the mechanism for intermittently causing the tape feed mechanism to operate as well as the wire or strip feed. In other words in that view the intermittent operation of the metal strip and the fabric tape is shown.

In Figure 4 there is shown a side elevation view of detail of the apparatus as shown in Figure 3.

It shows the manner in which one of the cams—that is the cam which operates the tape feed can be adjustably set so as to obtain the proper feed for the tape.

Figure 5 is a detailed front elevational view of assembly [69] of the ram, et cetera.

It shows the cross head to which the connecting rods are connected for operating the ram.

The ram is the part which corresponds to the red ram which we have depicted in Plaintiff's Exhibit 4 and is comparable in many respects to the head 14 of the Poux patent '017, Plaintiff's Exhibit 1.

The Court: You said the "red figure in Exhibit 4." It is orange color, isn't it?

The Witness: No, your Honor—well, the orange color is mounted on the ram, your Honor.

(Testimony of William A. Doble.)

The Court: Where is the red figure that you refer to?

The Witness: There is not a red figure. It is a heavy red line above the orange. It extends from the purple, from one purple to the other.

The Court: I thought you said "red figure." You mean the red line?

The Witness: The red line, yes, your Honor. That represents the ram in Plaintiff's Exhibit 4 to which certain of the operating parts are attached.

Figure 6 is the top view of the ram and its supporting guide. As will be noted in Figure 6 of the ram at its end is provided with inclined or angled surfaces for bearing in the support so that it may slide up and down with relation to the housing which is designated 278. [70]

I don't wish to go into too much detail with each of these figures at the present time. I just want to call attention to generally what they show so as to give a broad picture of the overall mechanism of the machine before we get into the details.

Figure 7 is a view of the upper end of the mechanism and shows the bracket which is mounted to the housing for supporting the shaft which carries the tape feed roller.

The tape feed roller is in the upper right-hand part of that figure and is designated by the number 168.

It is not shown very clearly in that view but if we look at Figure 6, which is an end view of Figure 7, the upper round wheel 168 is the wheel over

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which the tape is fed and causes it to move in a step-by-step manner.

To the right of that wheel is a brake shoe 208 which holds the tape onto the feed wheel with the proper tension so that it will feed in the desired manner.

Figure 7A shows a section of the feed wheel 168 and shows the manner in which it is notched out or recessed to accommodate one of the zipper elements, 178.

Turning to the next sheet of drawings, Figure 9 is the vertical sectional view on an enlarged scale taken substantially the length of the main housing to show the crankshaft and the eccentrics and the connecting rods which extend upwardly to the cross head of the ram and causes the ram to move up and [71] down in response to rotation of the main shaft 30.

I think that is all fairly clear and I think your Honor can pretty well picture that particular structure.

Figure 10 is a view of the eccentric used in Figure 9, the eccentric, eccentric strap and the cross-head pin.

Figure 11 on sheet 5 of the drawing illustrates the wire or strip feeding rollers in section and those two rollers are designated 94 and 96.

They are knurled on their surface and the two rollers are opposed to each other so that they grip the wire strip between the adjacent circumferal

(Testimony of William A. Doble.)

surfaces of the roller to force it into the machine proper.

It will be observed that those rollers are mounted for resilient action—that is the upper roller is provided with a pair of springs which forces it—which forces the upper roll down toward the lower of the two rolls so as to firmly engage the strip between the two rollers.

Figure 12 is an end view of the apparatus shown in Figure 11. There you can see the circles which include, first of all, the two gears which drive the feeding rollers.

Those gears may be observed in Figure 11. On the lefthand side of each of the feed rollers 94 and 96 are mounted respectively the gears 106.

The gears are approximately the same diameter as the feeding rolls and are really a part of the apparatus shown [72] in Figure 12.

There is also a little guide for directing the entrance of the wire strip into the feeding roller which is shown at the left-hand side of Figure 12 as projecting out from about the center portion of that figure.

The handle which extends upwardly to the left and is designated by the number 124, is used for the purpose of forcing the upper roll free from the lower roll so that a new strip may be easily fed in between the two rollers.

Figure 13, in the upper left-hand corner of the drawing, shown on Figure 5 is an end elevation of the brake mechanism which is used on the wire

(Testimony of William A. Doble.)

feed. The purpose of the brake is to prevent the wire from over-feeding or from slipping backward after it has been positively driven by the feed roller.

Figure 14 is an elevational view of Figure 13.

Figures 15 and 16 illustrate the brake mechanism for the tape feed—that is for the fabric tape so that it will not advance beyond the point where it should and also prevents it from moving backward.

Figure 17 is a planned view of a strip as it appears—as its end is worked and cut.

It shows two of the heads or projections formed above the rounded cut adjacent to the lower end of the strip.

The strip is designated by the numeral 12 and the rounded cut is designated by the numeral 467. [73]

Within the rounded cut is illustrated the beaded portion of the tape is there designated by the numeral 174.

The next figure, 18, shows the planned view of the element if the element were merely cut off from the end of the wire strip and without applying it or clamping it upon the bead of the tape.

That operation does not normally take place in the machine. This view was primarily for the purpose of illustration.

Figure 19 shows the manner of the first clamping action which closes the jaws or legs of the zipper element about the bead of the tape and Figure 20

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shows the same element after it has passed through the second clamping operation.

In this particular patent there are two stages of clamping operations.

In Figure 20a at the very bottom of sheet 5 of the patent is a vertical cross-sectional view of the element such as show in Figure 20—the tape not being shown. And in that illustration the head 368 and the recess 370 is clearly shown and the zipper element itself or the element itself is designated 178.

In the next sheet of drawings, Figure 21, is a front elevational view of the base die block clamp blades and the punch block assembled.

It in some respects is very similar to Figure 5 but to which the operating elements have been attached. [74]

It also shows in this figure the housing which encloses the two clamping jaws which clamp the legs of the zipper to the tape.

It also shows adjusting screws for adjusting the various parts to bring about the proper co-ordination with relation to the punches and closing during the formation of the zipper and mounting it on the tape.

Figure 22 is an elevational view of Figure 21 but shows in detail or cross-sectional detail, one of the clamping blades, 524, which is located down in the lower central portion of the figure and rides in the clamp blade guide 510.

The figure 510 is slightly above the left-hand pro-

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jecting block down near the lower end of the figure.

The Court: I see it.

The Witness: As I say, I am not going into great detail on this now. I just want to point out the various elements generally.

Figures 23, 24, 25, 26, and 27 illustrate the die block which co-operates with the punches carried by the ram in forming the zipper element.

I will go into that in more detail later.

Figures 30, 31 and 32 illustrate on an enlarged scale the end portion of the clamping blade 524 which effects the clamping of the legs of the elements to the tape as shown in Figure 32. [75]

The Court: Where is Figure 31?

The Witness: Figure 31 is right to the left of Figure 30, your Honor. It is a very small figure. Part of it is in cross section. It is directly in front of Figure 30.

The Court: All right.

The Witness: Figure 32 illustrates the clamping blades in relation to a series of zippers which normally would be mounted on the tape passing up through to the tape feed.

The lowermost is being clamped on the tape by the lower jaws of the clamping blades.

Then there is a recessed portion of the clamping blades forming the gap 550 so that the next two elements are not engaged by the adjacent ends of the clamping blade and then on the fourth operation or the fourth element up is shown as being

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engaged by the upper face 560 of the upper portion of the clamping blade.

Now, turning to sheet 7 of the drawings. Figure 37 and 38, starting at the upper left-hand corner of the page, there is shown two views—38 in cross section and 37 in plan of the blade clamp housing. In other words the blade clamp slides in the groove 520 of the housing.

In Figures 39 and 40 there is shown a full view of the clamping blade.

Figure 39 is an elevational view of the clamp blade and Figure 40 is an end view. [76]

Figures 35 and 36 illustrate—Figure 35 illustrates in planned view the die block. It is the retaining or supporting block to which the die block is mounted.

And Figure 36 is an end view of the block.

Figure 33 is a planned view of the ram and illustrates the manner in which the punches are mounted on the die block of the ram.

Figure 43 shows a planned view of one of the cam members which is mounted on the ram for actuating the slide or clamping blade which closes the legs of the element on the tape.

There is one of those mounted on each side of the ram as is shown in Figure 31.

You will recognize the same large parts on Figure 31 by the general rectangular shape of the piece with the elongated slot 500 formed therein mounted on each side of the ram, it having cam surfaces—inclined cam surfaces 105 at the lower

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end for engaging on corresponding inclined cam surface 542 formed on the clamp blade as shown in Figure 39. [77]

In other words, the cam surface 542 shown in Fig. 39 is engaged by the inclined surface or cam surface 504 of Fig. 43.

Fig. 44 is merely an end view of Fig. 43.

Figs. 44, 45, 46, 47, and 48 show——

Q. You are on sheet 8?

A. On sheet 8—illustrate a cam member which is used to release the feed of the tape shoe. In other words, the tape shoe as we see it in Fig. 8 on sheet 3 of the drawings is pressed against the periphery of the tape feeding wheel 168. And in order to facilitate mounting the tape on the feed wheel 168, that brake shoe is retracted by means of cams, which we have just observed in Figs. 45 through 48.

Figs. 48, 50, 51 and 52 illustrate a guide for guiding the wire into the machine.

Figs. 54 and 55 illustrate a tape tensioning mechanism. It acts not only to tension the tape as it passes from the tape feed up through the fastening location, but also acts to guide the tape. It gives a guiding and friction effect to hold the tape properly taut in position for the clamping of the element to the tape.

Fig 56 is a transverse sectional view on line 56—56 of Fig. 33.

Now, if we turn back to Fig. 33, which is shown on sheet 7, which is the next sheet back, and if you will note on each side of that figure there is a

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heavy broken line with an arrow [78] pointing downwardly and the figure "56" adjacent the head of the arrow, that indicates the plane through which the section of Fig. 56 is taken, and it also illustrates the nesting of the punches in the punch block which, in turn, is fastened to the ram which reciprocates up and down.

The particular form of the punch which forms the recess and projection is shown in Figs. 57, 58, 58a, and 59. The cut-off punch is shown in Figs. 60 and 61.

Now, if we will look back to Fig. 56 we will note that there is a little square in the center of a larger square in about the center of the Fig. 56. That smaller square is designated by the numeral 324, and you will observe in figures—especially Fig. 58, the corresponding numeral 324, which indicates that the punch for making the recesses and projections is mounted in that particular portion of the die block or ram block.

The next square outwardly or downwardly from the square section 324 in Fig. 56 is designated by the numeral 322, which is the punch section which is illustrated in Figs. 61 and 60 to the right of Fig. 56.

It illustrates the mounting of the two punches closely positioned in the punch block, which is carried by the ram of the machine.

Figs. 62 and 63 deal with a particular form of mechanism for periodically interrupting the attaching of elements to [79] the tape, and I do not be-

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lieve that we need go into that. That is a phase in the operation which is not involved in the matter before us.

Turning to sheet 10, and to Fig. 65, which is illustrated in the upper portion of sheet 10, Fig. 65 is a planned view of a portion of the base. In this figure the die block into which or which cooperate with the punches carried by the ram are shown in their relation to the block 246. The block 246 in a sense forms a part of the base of the machine.

Now, if we go down to Fig. 64, to the lower left-hand side of sheet 10, we have a cross-sectional view illustrating the punch block, that is the lower punch block, the punch retaining member, and the punch with a base and also the die block. The upper portion indicates the ram. The ram is designated by the numeral 272, and it is the member that moves up and down in a formation of the elements.

To the front face of that ram is mounted a ram block, and that is designated by the numeral 308.

The ram is not shown in full details. It is broken off. However, the full section of the ram block is shown.

Next to the ram block to the left is the portion designated 314, which is the punch block, which is mounted in and clamped to the ram block.

And it will be observed in this punch block, the punch section 324, which is the punch into which the metal is forced [80] to form the projection, and then to the left of that there is the punch section 322, which cuts off the element from the strip at

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about or substantially the same time that the element is fastened to the tape.

Now, cooperating with the punch member 324 is the lower punch member 324, it having an upwardly projecting projection 366, which forms the depression in the strip, while that material or metal that is forced upwardly flows into the depression in the punch section 324, forming the projection on the upper face of the strip and a depression in the lower section of the strip.

The next member in order is a spring pressed member which is pushed downwardly during the shearing action of the finished element from the metal strip. And after the ram moves upwardly, taking with it the cutting die, or cutting punch, the spring pressed member lifts the forward end of the cut tape so that it will feed forwardly over a pilot projection formed on the lower cutting die, which is shown not too clearly, but is indicated by the number 462.

Now, if we look directly above to Fig. 65, the parts that we are looking at in Fig. 65 are the punches, the upper end of punches 440.

The Court: Are you looking at Fig. 65?

The Witness: 65, yes, your Honor. And it is sort of a T-shaped member, part of which is under the stripper plate [81] 426, that is, the T-shaped portion of it, and forwardly of that there is a little sort of a square portion which is the projecting die portion which pushes the depression or recess into the strip.

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Then next to that is the spring pressed member, which is pushed down during the cutting operation. And then just forwardly of that member is the cut-off die, and you will notice that it has a rounded shape, which is the shape of the rear end of one element, and forms the opening at the end of the next element, forming therein the curved portion as shown in Fig. 18 on sheet 5.

The V-shaped slot, which enters from the left, is the slot through which the tape is fed. It has a slight rounded opening toward the face or formed in the face or through the edge of the shearing die. That is for the bead or flange of the tape to pass down through the die mechanism.

And, lastly, we have Figs. 66, 67, 68, and 69, which illustrate the tape 172 passing down past the end of the wire or strip 12, about which the legs 466—that is, about the beveled edge of the tape the legs 466 extend or straddle. And it also shows two heads formed on the strip above the tape opening. The heads are designated by the numeral 368.

Fig. 67 illustrates the closing of the legs and the clamping of them upon the bead of the tape during the initial clamping operation as I have previously pointed out. [82]

Fig. 68 shows the element cut free from the wire strip.

Fig. 69 shows the second clamping operation which elongates the zipper element and removes the little side projections 554 as they appear in Fig.

(Testimony of William A. Doble.)

68. The zipper then is finished and passes on up over the feeding roll and out of the machine.

Q. Do you want to take a few minutes?

A. If I could take a recess, your Honor, I could take a drink and my voice would be a little better.

The Court: It is time for a recess. I didn't realize how late it was. We will take a short recess.

(Recess taken.) [83]

The Court: You may proceed. I am sorry to be late but I had some other business, both at noon-time and at the recess which I had to attend to. You may proceed.

Q. (By Mr. Leonard S. Lyon): Mr. Doble, can you now identify the essential and important elements of the machine described in the '793 patent and perhaps you can illustrate the same by use of the chart, Exhibit 4?

A. Yes. I have before me Plaintiff's Exhibit 4 and I will refer first to plate 2 of that exhibit.

In order to simplify the structure and to make a pictorial representation of the important features of the invention I first sketched out a figure like shown in plate 2 and then had a draftsman make it. It is not a scale drawing. It is primarily a pictorial representation of the important features of the Silberman patent, Plaintiff's Exhibit 3, I believe it is—yes, Exhibit 3.

For example, I have illustrated the ram merely by a heavy red line which extends diagonally from the upper left to the lower right of the figure, because I felt that it didn't much matter whether the

(Testimony of William A. Doble.)

ram was of one mechanical construction or another. The important thing was that there was a ram and what did the ram do?

So, I have extended from that heavy diagonal line vertical lines which engage certain elements and have little arrowheads indicating that those elements to which those lines [84] continue are parts that are carried by the ram and operate with the ram.

Likewise, I didn't feel it mattered much what type of base was used. Many forms of base could be used, so I merely indicated that there was a base by the broken lines and the little shading lines adjacent to the parts carried by the base.

I provided a set of feed rollers for the metal wire which is intermittently operated but I didn't feel that the intermittent operating mechanism was particularly essential because many different forms of intermittent operating mechanisms could be used.

In the same way I depicted the tape feed wheel which is shown in the chart as brown, over which the completed tape is fed and the wheel is opposed by a brake shoe so that the tape is held onto the feed wheel in order to step-by-step *more* the tape.

Here again I didn't think it was important as to the particular form of driving mechanism for the tape feed wheel need to be illustrated. [85]

Now, I might apply the claim 40 to the figure of plate 2 to show wherein each of the elements which are the important or the essence of the invention are found in plate 2.

Q. (By Mr. Leonard Lyon): The elements that

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are set forth in plate 2 are actually identified and described in the specification and shown in the drawings of the '793 patent, are they not?

A. Yes, sir, they are.

Q. When you run one of these colored lines from an element in the legend in plate 1 over and terminate it with the colored part corresponding to the color of that line, do you mean to say that the machine described in the '793 patent actually contains that part, is that correct? A. That is correct.

And that is clearly illustrated by, for example, the first element of claim 40, which reads, "a base." From that first element I have, by means of a black broken line carried the legend "a base" over to the orange punches and the yellow clamp blade, which is the clamp blade 524 of the patent, which is slidably mounted on the base.

The punch members, which is shown in orange, are supported on the base, they are fixedly mounted on the base. And you will notice that the black lines which indicate the base are in contact with the lower ends of those two punch parts, whereas the part which indicates the base adjacent the [86] yellow clamp blade 24 is spaced slightly from the side of that clamp blade, indicating that it is slidably mounted on the base.

It doesn't much matter what kind of a base you have. Many forms of bases could be used. So there was no need of making any particular form of base.

The next element reads, "a ram movable with relation to the base," and from this element I have

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drawn a light red line, which leads to and by means of an arrow points out or indicates a heavy red line, which represents the ram 272 of the patent.

Now, as I said before, the particular form or shape of the ram is not important. It can be many forms and many shapes. The third element defines, "means for feeding a substantially uniform metallic strip between the ram and the base," and we have a blue line leading from the word "means" to the two feed rollers, which are colored blue, and in the patent are designated by the numerals 94 and 96. And those rollers have positioned between them a substantially uniform metallic strip, and that is illustrated in the figure of plate 2 as the pink strip which passes between the two feed rollers over toward the green tape. And it passes between the red ram and the black indication of the base.

The fourth element includes, "means for feeding a tape in a fixed path past the end of the fed strip," and from the [87] word "means" there is a brown line that carries over toward the upper right-hand portion of the figure and extends downwardly and terminates with an arrow. And there in brown is depicted the feed wheel 186 of the patent about which the tape is fed, or which acts to feed the tape, and against that tape mounted on the feed wheel is a brake shoe 208 as so designated in the patent. That brown brake shoe holds the green tape in contact with the intermittently rotated tape wheel 168 so as to advance the green tape each time an

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element has been attached to the tape and severed from the pink strip.

Element 5 reads, "The ram and the base having complementary means for forming and separating a slide fastener element from the fed strip."

Now, the complementary means on the ram are indicated by the orange line, which extends to the two upper orange elements, which are indicated as being mounted on the ram by the downwardly extending red lines of the ram with the little black arrows, which engage the centers of the orange members, or complementary means. The orange line then extends, also, downwardly and to two cooperating or complementary means, one the projection-forming die or punch, which is designated by the numeral 366 in the patent, and also the cut-off die, which is designated 456 in the patent. [88]

The Court: The cut-off die is the larger orange picture?

The Witness: That is right, your Honor, with the rounded edge facing toward the left, which is the same rounded shape which is given to the element when it is cut from the strip.

The Court: What is the number of the cut-off die?

The Witness: 456, your Honor.

The Court: 456?

The Witness: Yes, your Honor.

The Court: That is the bottom part of it?

The Witness: That is the bottom part of it. The upper part is 322 and the upper part of the pro-

(Testimony of William A. Doble.)

jection forming die is 324 and the head formed by those dies is the full line black head, the two of them formed on the right-hand end of the strip, and in the patent are designated by the numeral 368.

Q. (By Mr. Leonard S. Lyon): To what extent does the shape of these parts that you have just identified as they appear in this exhibit 4, correspond to the shape of the corresponding parts as shown in the patent?

A. The effective parts closely resemble the corresponding parts in the patent.

Q. In other words you attempted here to reproduce the actual shapes of those parts?

A. That is correct. But the length of those parts are [89] not the same as in the patent. As I said, I didn't think it mattered very much whether the punch was three inches long or six inches long, as long as it performed the function in combination with the elements sufficient to illustrate the elements and its operation.

The sixth element reads:

“A pair of jaws on the base immediately at the position of the separating means, the jaws being disposed on either side of the tape and being slidable toward each other for engaging and closing the element upon the edge of the tape as it is separated from the strip.”

And on plate 2 I have indicated a pair of jaws which in the patent are referred to as the “clamp

(Testimony of William A. Doble.)

blades," and they are designated by the numeral 524.

As will be observed in plate 2, there is a lower clamp jaw or blade which is directed toward the legs of the element which is about to be fastened to the bead 174 of tape 172.

Directly above the pink metallic wire or strip there is a second yellow clamping blade which also bears the same numeral in the patent, '524, so that we find in plate 2 a pair of jaws.

The Court: Let me interrupt.

The Witness: Yes.

The Court: Ordinarily when you say "a pair of jaws" *you* [90] *one* jaw on either side and according to the patent description they come together and do the clamping action?

The Witness: That is correct.

The Court: Does the patent also show the two pairs of jaws as you have shown on plate 2?

The Witness: Yes, your Honor.

The Court: In other words you wouldn't call the jaws that appear on plate 2, the lower and the upper one, both on side, as a pair of jaws?

The Witness: No, your Honor.

The Court: They are the complimentary parts of two pairs of jaws?

The Witness: That is correct, your Honor.

The Court: But the patent shows two pairs of jaws.

The Witness: The patent shows two pairs of jaws and each jaw having two engaging surfaces.

(Testimony of William A. Doble.)

The Court: I see.

The Witness: So, I have shown in plate 2, Plaintiff's Exhibit 4, a pair of jaws. They are slidably mounted on the base and they are immediately at the position of the separating means, the jaws being disposed on either side of the tape as is clearly shown in this figure for engaging and closing the element upon the edge of the tape as it is separated from the strip. In other words those two yellow jaws will move toward each other. They will engage the dark pink legs of [91] the element which is to be severed and they squash those legs tightly upon the bead 174 of the tape.

Q. (By Mr. Leonard S. Lyon): Now, what is intended by the dotted configuration of that pink zipper element?

A. That is the line along which the element will be separated from the wire or metallic strip.

Q. By the operation of the cutter when the ram comes down? A. Yes, sir.

Q. But there is no such actual line created by anything at the stage indicated by this chart?

A. That is correct.

Q. This is an imaginary line to show you where the cutter is going to cut, is that correct?

A. That is correct. And in the same way the projection or head furthest to the left is shown in broken lines to indicate that that will be formed on the next stroke of the ram in the same way that the dotted rounded portion of the darker pink end

(Testimony of William A. Doble.)

of the right-hand end of the metallic strip is severed from the metallic strip.

Q. In other words——

A. During the next stroke of the ram.

Q. In other words the dotted configuration indicates something that is going to happen on the next stroke of the ram but hasn't yet happened, is that correct? [92]

A. That is correct, sir. And in that connection I will call attention to the full line projection or head 368 in between the dark pink head, which is formed in dotted lines, and the head formed on the dark pink section that is going to be cut off.

Now, that head was formed on the previous stroke of the ram.

Now, the next element or the seventh element reads:

“And means on the ram for engaging the jaws to drive them into engagement with the element to close it upon the edge of the tape.”

Now, from the word “means” there leads a purple line which extends upwardly and has a narrow head pointing to a purple means, which is a cam, and is designated in the patent as cam plate 498.

That cam plate, as you will observe, at least the upper end of that cam plate is engaged by the red line with the little black arrow which represents that that particular element is carried by the ram.

The fact is there are two of those elements, one in the upper left-hand portion of the figure and one

(Testimony of William A. Doble.)

in the lower right-hand portion of the figure. And each is designated with the numeral 498.

They are each colored purple and the lower end of the ram is provided with a cam surface. That same surface is [93] a surface cut off on about a 45-degree angle. That surface engages when the ram is making its downward stroke. The cam surface 542 on the outboard end of the yellow jaws 524 so as to force the jaws or clamp blades 524 toward each other. That is, their inner ends toward each other to clamp the legs of the element about the bead 174—of the green bead 174 of the tape so that we find there that on the down stroke, or a single down stroke of the ram the yellow clamping blades are forced toward one another by the purple cam plates to close the legs of the element on the bead of the tape.

The cut-off die, which is also carried by the ram 272—that is cut-off die 322 and is carried by ram 272 moved down and cuts from the metallic—the pink metallic strip the dark pink portion which is bounded by the broken line. That action takes place after the legs of that particular pink element have been closed upon the green bead of the tape. That shearing action takes place over the lower cut-off die 456 and then the projecting form punch or die 324 engages the pink metallic strip and forces it down on the projection 366 of the lower projection forming die and thereby forcing the metal up into the pocket of die 324 and forming the head 368 as

(Testimony of William A. Doble.)

shown in broken lines and is colored dark pink on the light pink metallic strip. [94]

The Court: It does that on a portion of the metal strip which will be the third unit that will be created?

The Witness: That is right, your Honor.

Q. (By Mr. Leonard Lyon): Is it your testimony that plate 2 of this Exhibit 4 shows the elements of the machine described in patent '793 which are called for by claim 40 of that patent?

A. Yes, sir. I haven't quite finished the claim, Mr. Lyon.

Q. Proceed. I didn't mean to interrupt you.

A. The last element, the eighth element, reads: "The jaws and jaw engaging means having cam faces for direct engagement." Those are the cam faces which I have pointed out which are formed between the purple cam plate 498 and the cam surface 542 at the outboard end of the yellow jaw 524, and those two surfaces are brought into direct engagement to force the two clamping jaws into element fastening or crimping effect on the bead of the tape.

Q. You have not shown in plate 2 of Exhibit 4 the structure that produces the second clamping action of patent '793, have you?

The Court: Yes. That is the upper jaw.

Q. (By Mr. Leonard Lyon): That is the upper jaw?

A. Yes, that is the upper jaw and its purple operating cam. [95]

(Testimony of William A. Doble.)

I have shown both the jaws and both of the operating cams.

Q. Is that second clamping action or upper jaw called for by claim 40?

A. I don't know if I understand your question, Mr. Lyon.

Q. As I understand it, you have described, in connection with patent '793, two clamping actions or two clamping blows to clamp the jaws of the zipper elements, is that correct?

A. That is correct.

Q. Does claim 40 call for both of those clamping actions?

A. No, sir. It is broader than that specification detail.

Q. It just calls for one?

A. It calls for a clamping action.

Q. And what difference does it make whether you have a single clamping action or a double clamping action in the operation of this type of machine?

A. It doesn't make any difference. It is a matter of refinement in making the two clamping actions in place of one.

Q. Have you finished with your explanation at this point?

A. Well, I would like to go a step further, Mr. Lyon, [96] if I may.

Q. I don't mean your whole testimony, but I mean your explanation of chart 4.

(Testimony of William A. Doble.)

A. No. I would like to go a step further if I may.

Q. All right. Go ahead.

A. There is the relationship between the operation of the several instrumentalities.

Q. My next question is, now that you have identified the parts that are called for by claim 40, I would like you to describe the method of operation which is involved in the operation of this machine.

A. Yes, sir. I find in the method of operation of the mechanism shown on plate 2—well, I might say right off, in my opinion it embodies the method of Poux' patent, in that it manufactures the element at the end of the pink strip. It uses the strip to properly align and retain control of that element until it is accurately clamped upon the green bead of the tape as shown in this illustration.

Q. Is it identical with the operation of the apparatus shown in Poux' '017 patent?

A. No. The structure is quite different in plate 2 of Plaintiff's Exhibit 4.

Q. How about the operation?

A. The broad operation, that is, the method, I would say, is the same, but the operation of the structure as shown [97] in the Poux patent is different. For example, in the Poux patent you have a punch for making the key-hole. There is no punch for making any key-holes in the Silberman structure as shown on plate 2 of Plaintiff's Exhibit 4.

There is a spreader carried by the punch head 14 of the Poux patent, which is not found in the struc-

(Testimony of William A. Doble.)

ture of the Silberman machine as depicted on plate 2 of Plaintiff's Exhibit 4.

Q. You have already called attention, in connection with Poux patent '017, to the fact that the cutters operate from the side; will you compare the cutting action in the case of the machine of the '793 patent?

A. Yes, sir.

Referring again, to plate 2 of Plaintiff's Exhibit 4, it will be observed the cutting action takes place in a vertical plane. That is, the upper cutter member 322 moves downwardly and shears the pink metal strip or wire 12 against the curved surface of a lower cutting die 456, which is mounted below the pink strip. So the cutting action is in a vertical direction as against a horizontal or sidewise direction as found in the Poux patent '017.

Q. What actually is the cutter in the case of the machine of the '793 patent?

A. The ram operates the cutter.

Q. The cutter is carried by the ram? [98]

A. One part of it is carried by the ram and one part by the base, and the active part carried by the ram is moved with the ram to perform its cutting operation.

I believe I was pointing out the operation of this particular structure, and I will point that out with relation to the parts as they appear on plate 2 of Plaintiff's Exhibit 4.

The next operation, or I will say the first operation from the position of the parts shown in this

(Testimony of William A. Doble.)

figure is for the movement of the ram downwardly. The movement of the ram downwardly carries the purple cam plates 498, the orange cutting die 322, the orange head forming die element 324. As the ram moves downwardly, the cam surfaces of the purple cam plates engage their related cam surfaces on the yellow closing jaws. The yellow closing jaws are then forced into engagement with the dark pink legs of the element, closing the element about the enlarged bead 174 and of the tape 172, which are colored green in this illustration. At substantially the same time or about that time, or even during that time that the legs are being clamped on the green bead of the tape, the orange cutter 322, which is carried by the ram, engages the top flat surface of the pink metal strip, forces it down against the flat face of the lower cutting die 456, thus not only aligning the pink metallic strip with the top surface of the cutting die, but also clamping it tightly against [99] that surface during the swedging or pressing of the legs of the zipper element onto the bead of the tape.

Likewise, at about that same time or shortly thereafter the head forming die element 324, which is also carried by the ram, engages the pink metal strip and forces it down so that the head is formed on the pink metal strip by the orange projection 366 of the lower head forming die. [100]

The Court: Might I interrupt you there?

The Witness: Yes, your Honor.

The Court: You said that this cutter cuts off at

(Testimony of William A. Doble.)

about the same time that the legs are closed around the bead.

The Witness: Yes, your Honor.

The Court: Now, did you misspeak yourself when you were talking about point 7 under the element of the patent means? My notes say that the cut-off action takes place after the legs have been closed around the bead.

The Witness: Well, it is simultaneous—the cutter might start first.

The Court: I see that it could be constructed, from this diagram, to make it cut first.

The Witness: It could cut first.

The Court: All you would have to do would be to have your purple cam 498 so that it began operation long before the punch and the cutter came down.

The Witness: Yes, that is true.

The Court: But as I have it you did say it took place after the legs were closed—the cutting took place.

The Witness: The cutting took place after the legs of the element are closed about the green bead of the tape. However, the cutting could take place simultaneously with the gripping of the legs about the bead of the tape.

In other words as soon as it starts to grab, the legs [101] start to grab ahold of the tape you have the element located and then the further clamping action merely secures the legs of the element that much more firmly on the bead of the tape.

(Testimony of William A. Doble.)

So, the cutting action could start after the legs of the element are fastened to the tape or those two actions could take place simultaneously.

It is a matter of adjustment of the machine and it is preferred that the legs are closed sufficiently upon the bead of the tape so that they are definitely located in that particular position before control of the element is lost by cutting it off. Once you cut it off you have lost control of it.

The Court: I understand that.

The Witness: And that is one of the virtues of the Poux and this particular patent, is that you don't lose control of it until after the element is fastened to the tape.

Now, another important phase of that cycle of operation resides in this, that in a very high speed machine, which is one of the features of the Silberman patent, it provided a relatively simple and inexpensive machine which has been able to run at very high speeds, much higher speeds than they have been able to run zipper machines up to this time.

Now, in a very high speed machine everything is bouncing around and you can't leave any part to chance that it will stay in the place it is supposed to stay. [102]

Also there is another important feature that we should consider. The wire is a metallic strip. It is relatively thin but it is wide. It gets little wavers in it. Those should be straightened out at the time the element is fastened onto the tape.

(Testimony of William A. Doble.)

So as to accomplish the complete control of the element with this strip at the time it is mounted on the tape, not only is the pink metallic strip used as a handle but the metallic strip is clamped very tightly between the cut-off die, between the two cut-off dies and the two dies which form the head. In other words the metallic strip is not permitted any latitude to escape from its correct register and position with relation to the head of the tape.

And in that respect this Silberman patent differs from the Poux patent in the absolute control as to all the angles—high speed, vibration, inaccuracies or wavers in the strip so that regardless of those conditions the element will be accurately and each time put on the tape at the correct location and without it angled one direction or another.

Q. (By Mr. Leonard S. Lyon): What have you to say as to whether or not the machine of the Silberman patent, '793, is a practical, operative machine?

A. Well, I have seen a number of them operating and so I must say they are a very practical machine. They are very high speed. Zippers just—stringers just seem to pour [103] out of the machines.

Q. Can you give us any figures on how many zippers are made in what length of time on one of these Silberman machines—how many zipper elements are fastened to a stringer?

A. The zipper elements? Well, the machine was running between 2,000 and 2,500 revolutions a min-

(Testimony of William A. Doble.)

ute which would mean that 2,000 to 2,500 zippers were applied to the stringer each minute.

Q. Now, you say you have seen a commercial machine made in accordance with or under the Silberman patent, '793, actually in operation?

A. Yes, I have seen them.

Q. As a matter of fact you had one of those machines brought here and it is here in the courtroom now, is it not?

A. Yes, sir.

Mr. Leonard S. Lyon: I think we will offer the machine in evidence as Plaintiff's Exhibit No. 5 and if the court would care to step down and look at this machine the witness can point out, with reference to the chart, Exhibit 4, where these elements are in the machine. It may help your Honor to see the actual physical structure.

The Court: Exhibit 5 is received in evidence.

(The object referred to, marked Plaintiff's Exhibit 5, was received in evidence.)

The Court: I think I understand the operation of this [104] patent. However, I will look at the machine but I don't think it would do any good to make a record of it, would it?

Mr. Leonard S. Lyon: We have the machine right here in the courtroom. We can't get it any closer to your Honor as it won't go through the gate.

The Court: You can't operate it here, can you?

Mr. Leonard S. Lyon: We can if your Honor wants to see it. It takes 220 volt current and we can run a wire in the courtroom for that purpose.

(Testimony of William A. Doble.)

We can do that by tomorrow morning if your Honor wants to see it work.

The Court: Is there some way to turn the mechanism over?

Mr. Leonard S. Lyon: Can you turn it over by hand, Mr. Doble?

The Witness: Yes, sir.

The Court: All right. Why not let me look at the machine and have someone turn it over and let the record show I inspected the machine under hand operation.

I don't think it is necessary to have a record with the reporter present while you point out to me this, that and the other thing, do you?

Mr. Leonard S. Lyon: I don't think so. I think the witness can just show you the significant parts of the machine without the reporter taking it down.

It would be the same parts as are illustrated on the chart, Exhibit 4. [105]

The Witness: Yes. Could I make this suggestion, your Honor? The machine is not quite ready to run. We can have it ready to run by tomorrow but I can point out the parts and then I can run it tomorrow.

Mr. Leonard S. Lyon: Some of the parts you won't see very well because they are very small.

The Court: How much longer will you be with the witness?

Mr. Leonard S. Lyon: I am going into the question of infringement with him tomorrow morning,

(Testimony of William A. Doble.)

your Honor. I think I have largely covered the patents in suit now.

The Court: How much longer will you be with your case?

Mr. Leonard S. Lyon: I hope to finish it tomorrow.

The Court: You have additional witnesses?

Mr. Leonard S. Lyon: I have at the most two more witnesses, neither one of whom will be anything near as long as Mr. Doble.

The Court: Are they experts?

Mr. Leonard S. Lyon: No. One of them is a man who is in charge of the patent department of the Talon company, who knows the commercial history of this Silberman machine and the licenses that have been granted under it.

I would like him to testify and then we haven't made up our mind yet but there is a possible third witness who is a patent attorney, who drew up the Silberman patent and can identify the machines from which it was built in view of some [106] statements that have been made in the discovery depositions.

The Court: Well then, you are on schedule.

Mr. Leonard S. Lyon: I hope to be and hope to stay there.

The Court: Well, we will take our adjournment at this time.

Mr. Charles Lyon: Could we have an arrangement here? Could it be deemed that Exhibit 5 is

(Testimony of William A. Doble.)

released to the custody of the plaintiff so that we can relieve the clerk of having responsibility for it?

Mr. Leonard S. Lyon: That means that at the end of the trial instead of having the clerk file the exhibit as he is supposed, we can take it and store it and have it available if there is any future need in the case.

The Court: Is that satisfactory?

Mr. Mockabee: Yes.

The Court: It is also satisfactory, is it not, that the clerk will not be responsible for the mechanism while it is here in the courtroom?

The Clerk: May it remain on the floor of the courtroom during the progress of the trial?

Mr. Leonard S. Lyon: That is fine.

The Court: The clerk can't be in here watching over the machine before court and after court and at nighttime. The clerk will be relieved of any responsibility for this [107] exhibit?

Mr. Leonard S. Lyon: That is correct, your Honor.

The Court: I know he feels better.

The Clerk: If I see anyone tampering with it I will tell them to leave it alone.

Mr. Charles Lyon: Nobody is going to steal it.

The Court: All right. You may step down and we will adjourn until 10:00 o'clock tomorrow morning.

I will look at the machine this evening for a minute or two and then I will look at it when you get it in hand operation.

(Whereupon, at 4:30 p.m. a recess was had until 10:00 o'clock a.m., March 2, 1955.) [108]

Tuesday, March 2, 1955; 10:00 a.m.

The Court: Call the case.

The Clerk: Talon, Inc., vs. Union Slide Fastener, Inc., No. 10450-C for further trial.

The Court: You may proceed.

Mr. Leonard S. Lyon: At this time the plaintiff desires to offer in evidence the deposition of Philip Lipson, taken in Los Angeles on March 18, 1952.

Mr. Lipson is the president of the Union Slide company, the defendant in this case.

His deposition was taken under the rule. There are 15 paper exhibits to Mr. Lipson's deposition. I would like to offer those in evidence.

The exhibits numbered 1 to 12 are a series of drawings or blueprints that Mr. Lipson supplied at the taking of his deposition showing features of the accused machine.

Exhibit No. 13-A through 13-L is a series of photographs that were taken on the occasion of an inspection attended by Mr. Doble at the defendant's plant, at which time they looked at the accused machines.

Exhibit 14 is an assembly drawing made by a draftsman who attended that inspection and who examined the machines and listened to the explanation and he made these drawings from that information plus the information revealed by Exhibits [111] 1 to 12 and plus the information revealed by the photographs.

Exhibit No. 15 is a sketch that was made by Mr. Lipson showing the detail, during his examination in the course of his deposition.

Now, we will have to supply proper numbers for these exhibits because—we would like first to have the deposition opened.

The Court: Well, the deposition will be opened and will be received in evidence as Exhibit 6.

Now, as to the exhibits attached, Mr. Clerk, I suppose they will be 6-A, -B and -C.

The Clerk: I see no other way to do it. Is that satisfactory—the number 6 and then give sub-letters.

Mr. Leonard S. Lyon: Instead of numbering them 1 to 13 we will give them A, B, C numbers.

The Court: It might be more confusing in one way but more clear in another. Suppose we call them 6-1 to 6-15 and so on. That would preserve the same numbers.

Mr. Leonard S. Lyon: That will be satisfactory.

The Clerk: It never works out in written form that way, your Honor.

The Court: Is there going to be much testimony about these exhibits?

Mr. Leonard S. Lyon: Yes, your Honor, I think there will be and there probably will be some testimony by the [112] defendant in regard to them.

The Court: If we change the numbers then the witness will have to change his testimony so he will be talking about 6-M or 6-A or whatever the situation is.

The Clerk: Why not merely give the deposition

an exhibit number which would include the exhibits attached thereto—Exhibit 6 is the deposition plus the exhibits attached.

The Court: Then when the witness testified he would be talking about Exhibit No. so and so to the deposition of Lipson. That would be all right.

Mr. Leonard S. Lyon: That is satisfactory.

The Court: All right, Exhibit 6 will be received in evidence together with the exhibits attached thereto, which exhibits will be given the numbers as shown on them in the deposition, running from 1 to 15 and also the 13 series, 13-A to 13-L. [113]

WILLIAM A. DOBLE

the witness on the stand at the time of adjournment, having been previously duly sworn, was examined and testified further as follows:

Direct Examination—(Continued)

Q. (By Mr. Leonard Lyon): Will you take the photographs 13-A through 13-L of the deposition of Mr. Lipson, and the print Exhibit 14 to the deposition of Mr. Lipson, and the third plate of your chart Exhibit 4, and explain to the court the significant construction and mode of operation of the machines that you examined at the plant of the defendant Union Slide Fastener Company, and which are the machines accused in this case of infringing the patents in suit?

The Court: Just a minute. Let's have the clerk find these original exhibits and at least mark them tentatively, so I can have them here before me and follow you on them.

(Testimony of William A. Doble.)

Which ones did you refer to?

Mr. Leonard Lyon: I referred to the photographs Exhibits 13-A through 13-L.

The Clerk: How do you want them marked as individual exhibits, 6 in front of them and then 13-L?

The Court: I think that is all right. You can mark them later. They have marks on them sufficiently for the time being. [114]

Now, what else are you going to refer to?

Mr. Leonard Lyon: Then the blueprint Exhibit 14 to the deposition. It is not a blueprint; it is a print. And then the other document being considered is plate 3 of the chart Exhibit 4.

The Court: All right.

The Witness: May I have that question read, Mr. Lyon? There was considerable to it and I would like to get the full understanding of the question.

Mr. Leonard Lyon: Read it, please.

(The question referred to was read by the reporter, as follows: "Q. Will you take the photographs 13-A through 13-L of the deposition of Mr. Lipson, and the print Exhibit 14 to the deposition of Mr. Lipson, and the third plate of your chart Exhibit 4, and explain to the court the significant construction and mode of operation of the machines that you examined at the plant of the defendant Union Slide Fastener Company, and which are the machines accused in this case of infringing the patents in suit?")

(Testimony of William A. Doble.)

The Witness: Yes, sir.

I don't find that the photographs bear the exhibit numbers individually.

Mr. Charles Lyon: Yes, they do.

The Court: You have only copies. I have the originals [115] here, and they have numbers on them.

Mr. Leonard Lyon: The copies are marked too, your Honor. The witness just didn't see them.

The Witness: I have before me Plaintiff's Exhibit 13-A to the deposition, which is a photograph looking obliquely toward the bottom end of the ram and shows along the upper face the means for clamping the nested dies in the block, in the die block, and also illustrates the manner in which those particular dies extend downwardly from the lower face of the ram.

Now, the ram, as we have noted in Plaintiff's Exhibit—— is the Silberman patent No. 3? Yes, 3.——is of substantially the same shape and form, and is substantially constructed in the same manner. That is, the dies are put on in substantially the same manner, and are nested in the die block.

The ram in the Silberman patent bears the numeral 272. Shall I put those in ink on the photographs?

Q. (By Mr. Leonard Lyon): That is your copy. If they are not put on the court's copy, it won't make any difference.

A. Then I won't put the numbers on.

Mr. Leonard Lyon: If the court is interested, we

(Testimony of William A. Doble.)

can furnish another copy of these photographs on which the court can make any notations he wants, if he would prefer to do that on an extra copy, rather than the exhibit. [116]

The Court: Is there any objection——

Mr. Leonard Lyon: I have no objection to your making the notations on the exhibit.

The Court: Is there any objection?

Mr. Mockabee: No.

The Court: All right. The ram is what—272?

The Witness: 272, your Honor. And the ram 272 is depicted diagrammatically on plate 3 of Plaintiff's Exhibit 4 as the heavy red line with the downwardly extending lines pointing to the several parts which are carried by the ram.

Shall I designate, also, Mr. Lyon, the red line which represents the ram, on——

Q. (By Mr. Leonard Lyon): This is your copy of the exhibit, but you can suggest to the court if he wants to do it on the exhibit. It doesn't make any difference what you mark on your copy.

A. I am talking of plate 3 of Exhibit 4, the heavy red line, which is diagonally represented upwardly as 272.

The Court: All right.

The Witness: The ram carries the head forming die 324. In fact, it carries two of the head forming dies 324, one adjacent each end of the ram.

The Court: Do you mean there is a dual set-up?

The Witness: It is a dual set-up, your Honor. Similar to the machine which we have in court.

(Testimony of William A. Doble.)

The Court: Well, each one of the two units of the dual set-up is identical?

The Witness: That is correct, your Honor.

The Court: Let's not encumber the record with any reference to this dual situation, then.

The Witness: Thank you, your Honor.

The Court: Is that satisfactory?

Mr. Mockabee: Yes, sir.

The Court: That doesn't add a thing. You can have a battery of six, I suppose.

The Witness: That is correct.

The Court: Or three or four.

The Witness: That is correct.

The Court: All right.

The Witness: I will confine myself to one unit.

Directly above the head forming die 324 is the cut-off punch 322, and it is the orange colored block.

The Court: You said directly above; it is directly adjacent rather than above?

The Witness: If you look at the photograph to which I was referring——

The Court: Which photograph?

The Witness: Photograph Exhibit 13-A to the deposition of Lipson, the cut-off punch is directly above the head forming die 324. [118]

The Court: All right.

The Witness: And by suitable means this clamp in a groove forms the ram.

Now, in Figure—in plate 3 of Plaintiff's Exhibit 4 there is indicated the vertical lines with the little

(Testimony of William A. Doble.)

arrows pointing to the upper dies carried by the ram of which the head forming die 324 to the right and that is nested to the——

The Court: To the left?

The Witness: To the left, your Honor, that is right. And the cut-off punch is to the right of the head forming die 324 and is designated by the numeral 322.

That is the two orange square blocks which are carried by the ram during its downward stroke.

Also on photograph, Plaintiff's Exhibit 13-A to the deposition of Lipson, on the upper face of the ram there are adjustably secured the cam plates 498. There are two of those, one on each side of the nested dies.

The Court: They are the objects on the far right and far left, I take it, of the top photograph.

The Witness: No, I would say——

The Court: Right here and here?

The Witness: No. Well, that is for the other forming head, your Honor. The two that operate to close the one stringer that we are relating the dies to is to the extreme right of the block and the opposite one is to the left of the [119] particular set of dies we have pointed out.

The Court: I see the ones you mean.

The Witness: The two cam plates 498, are found in plate 3 of Plaintiff's Exhibit 4 and they are colored purple so as to clearly visualize the particular element and its general outline. They are adjustably carried on the face of the ram block.

(Testimony of William A. Doble.)

I might also point out the "V"-shaped guiding surfaces by which the ram block is supported during its reciprocation in forming the zipper unit.

Also the two out-extending arms which are referred to as part of the cross-head to which the connecting rods, which operate the block, are attached by suitable pins. The pins are not shown.

I would next refer to Plaintiff's Exhibit 13-B of the Lipson deposition which is a rear face view of the machine and upon the upper portion of the guide structure which supports in sliding relation the ram.

The ram has been removed and mounted on that upper surface so that the rear surface of the ram with its cross-head extending to each side is clearly visible.

The Court: In other words, it has been moved out of its proper position so we can see the bottom of it.

The Witness: That is correct, your Honor, the back face of it. [120]

In this view the pins to which the cross-head is attached is clearly shown to the left-hand side of the figure, that is correct, your Honor, which pin connects to the upper end of an eccentric rod which is referred to in the Lipson patent by the numeral 320.

The Court: That is the rod running down from here?

The Witness: Yes, your Honor.

(Testimony of William A. Doble.)

The Court: 320?

The Witness: Yes. And the pin is designated by the numeral 290.

It will be understood, your Honor, that there is a similar arrangement on each side of the machine.

The Court: All right.

The Witness: Now, immediately in the center of the photograph there is illustrated the metal strip or metal wire feeding rolls which are corrugated to grip the strip so as to feed it into the machine. Those feeding rolls——

The Court: What do you mean by rip?

The Witness: To grip the strip to feed it into the machine, the feeding rolls as we have already marked on Plaintiff's Exhibit 4, plate 2.

They are identified by the numbers 94—that is the lower of the feed rolls is No. 94 while the upper feed roll is No. 96.

To the side of those two feed rolls are the driving [121] gears for driving the feed rolls intermittently at the proper time.

Also on the back portion of the machine is illustrated the means for intermittently driving the rolls.

Now, referring back to Plaintiff's Exhibit 4, plate 3, we find the two blue feed rolls, the lower of which is 94 and the upper of which is 96 and between these two feed rolls tape is fed into the defendant's machine.

To the upper right-hand side of photograph 13-B of the Lipson deposition may be observed the

(Testimony of William A. Doble.)

ratchet and pawl for feeding the tape intermittently through the machine.

The Court: You are referring to this here?

The Witness: That is correct, your Honor.

The Court: What is the number on that?

The Witness: I don't have the numbers of the several parts. I will point out later on the wheels about which the tape itself is engaged to be fed. This is just the mechanism which drives the wheels or the wheel 168 to intermittently feed the tape through the machine.

Now, next turn to Plaintiff's Exhibit 13-C of the Lipson deposition which is a view from the top looking down into the area of the machine which is normally located by the reciprocating ram, but in this figure the ram has been removed and the "V"-shaped guide, which supports the ram, are clearly observable. [122]

Also it may be observed the die block which is supported in the base and in this case I would refer to the right-hand die block. There we can just discern the little punch member which punches the depression in the metallic strip.

The Court: Here?

The Witness: Yes, your Honor.

The Court: The metallic strip to form the head.

The Court: There seems to be a difference in the two units here, the right and left units because on the left unit you can see two of them, it looks like, and on the right you can only see one.

The Witness: I think in the left-hand side a

(Testimony of William A. Doble.)

portion of the tape is positioned in the die block so you see a head which has previously been formed on the tape, on the metallic tape.

The Court: I see.

The Witness: And strip, and the punch part which I have just referred to bears the numeral 366 which projects above the die block or punch block 456.

Now, in referring to defendant's structure as illustrated on plate 3, Exhibit 4, the die block is the lower orange member which is positioned to the left of the other group of die parts and is also, of course, identified in the patent by the number 456.

The Court: That is the orange block except for the protruding die, is that it?

The Witness: Yes; and the punch I was just going to refer to, your Honor, that is the lower punch which punches the depression in the lower side of the metallic strip.

The Court: The punch is the little rectangular object on top.

The Witness: The punch is designated by the numeral 366. [124]

The Court: And the block by what?

The Witness: 456.

The other portions of the die block are not very clearly distinguishable in this particular photograph, but I hope to be able to point them out later in one of the other drawings.

In the very upper portion of the photograph, Plaintiff's Exhibit 13-C to the Lipson deposition,

(Testimony of William A. Doble.)

will be observed a shaft which extends from right to left, and upon that shaft there is mounted a serrated or roughened feed wheel, which the patent identifies by the number 168, about which the fabric tape is passed to intermittently feed it through the machine.

The Court: You said 168?

The Witness: 168, your Honor.

The Court: Wasn't it 186?

The Witness: No. 168, your Honor.

The Court: Are you talking about the equivalent of the wheel up here?

The Witness: Yes, your Honor, and that is 168.

The Court: Then I made a mistake yesterday. I marked it 186.

The Witness: Maybe I said the numbers backwards, but I have identified it as 168.

The Court: All right. We are talking about the same thing then. [125]

The Witness: Now, referring to Plaintiff's Exhibit 4, plate 3, we find the brown tape feed wheel 168 about which the green tape is intermittently fed through the machine.

Q. (By Mr. Leonard Lyon): Mr. Doble, I wish you would stop a moment about this number 168 and 186. There must be a mistake, because it was marked yesterday 186. I wish you would look at the patent and see what the number is.

A. The patent shows the number 168, and I will refer you to Fig. 8, page 3, of the drawings. Especially the Fig. 8 in the upper right-hand corner

(Testimony of William A. Doble.)

of the figure there is the numeral 168 with a lead line to the feed wheel. And I refer to column 8 of the specification of the Lipson patent, line 60, which reads, "a tape feed wheel 168," et cetera.

Is that understood now as being clear to all concerned?

Q. Which patent are you referring to, Mr. Doble?

A. I was referring to the Silberman patent, Plaintiff's Exhibit 3.

Q. You have mentioned twice in your testimony this morning the Lipson patent; that is a mistake in each case and it should be the Silberman patent?

A. If I have so mentioned it, I would like to correct it. It is the Silberman patent I have intended to refer to.

The Court: And the Lipson deposition?

The Witness: And the Lipson deposition, that is correct, your Honor. [126]

I will next turn to Plaintiff's Exhibit 13-D of the Lipson deposition, which is a view taken similar to the photograph Plaintiff's Exhibit 13-B, but in this instance or in this photograph the ram is mounted in its supporting housing and is in its normal operating position, and above the ram the tape feed wheels 168—or, tape feed wheel 168 is clearly seen with the tape 172 passing about the upper periphery of the tape feed wheel 168. And from the wheel it will be observed that the tape

(Testimony of William A. Doble.)

extends downwardly towards the center of the machine.

I might point out in this photograph, I hope I don't confuse anyone, that the two tape wheels—that there are two tape wheels shown, one for each of the forming units. The tape which passes about the left hand of the two tape feeding wheels illustrates the manner in which the tape passes around the wheel with the zipper elements securely clamped thereon; whereas the tape for the right-hand of the two tape feed wheels does not have the zipper elements about that portion of the tape which is extending over the upper periphery of the wheel.

However, if you look at the far end of the tape, which you can just see a very short portion of from the forward edge of the wheel down to the top of the ram, you can see a string of elements attached to the tape.

The purpose of taking the photograph in this manner was [127] to show the manner in which, when the elements were fastened to the tape, they pass over the periphery of the feed wheel.

Other than what I have pointed out I do not believe this photograph teaches anything substantially different from the photograph, Plaintiff Exhibit 13-B of the Lipson deposition.

I am now turning to photograph 13-E of the Lipson deposition, which is a three-quarter rear view of the machine and shows the ram disconnected from the connecting rods and moved up-

(Testimony of William A. Doble.)

wardly from its guide block to show the manner in which the ram is guided in the guide block, which is supported by the base of the machine.

Are there any questions your Honor has about Plaintiff's Exhibit 13-E? If not, I will pass to the next photograph.

The Court: No.

The Witness: I now have Plaintiff's photograph 13-F, which is a three-quarter rear view of the machine taken from the opposite angle to more clearly illustrate the mechanism for intermittently advancing the tape feed wheel, and also the mechanism for intermittently advancing the metallic strip into the machine. The ram is in its normal operating position.

Other than for those comments, I would pass now to Plaintiff's Exhibit 13-G of the Lipson deposition, which is an end view of the machine, that is, the end of the machine which has the tape feed and metallic strip feed mechanism extending down [128] to the main shaft of the machine, where they are operated by suitable eccentrics or cams mounted on the main shaft of the machine, and illustrates the connecting rods or crank arms which actuate the ratchet wheels formed—one is formed to the left side of the machine about midway up, and that is the metallic strip feed ratchet and pawl, whereas the tape feed ratchet and pawl mechanism is shown in the upper right-hand portion of the figure. In this photograph I would like to call attention to the brake shoe 208. The brake shoe is the member which bears against the right-hand

(Testimony of William A. Doble.)

periphery of the tape feed wheel 168.

The Court: This would be the brake shoe here (indicating)?

The Witness: The brake shoe is this member down here.

The Court: Doesn't it run clear up there?

The Witness: I can't see in this photograph whether it runs——

The Court: We will mark the bottom part of it. What is the number of it?

The Witness: 208.

And the feed wheel is 168.

However, it does show the relationship of the brake shoe, which is spring pressed by suitable spring means against the periphery of the tape feed wheel to clamp the tape to the wheel so it will feed with each rotation of the machine. [129] Otherwise the machine is in its normal operating condition.

I will next turn to Plaintiff's Exhibit 13-H of the Lipson deposition, which is a photograph of the front end—of the front face of the Lipson machine. In this figure the tape which normally would extend upwardly over the feed wheel 168 has been removed from the wheel and passes down over the die block. That was done so the forward end of the ram could be more clearly observed together with the punches and the actuating cams for the closing jaws could be seen.

The ram is designated by the numeral 272 and carries the long punch which cuts the finished element from the metallic strip, and that cutting

(Testimony of William A. Doble.)

punch is designated by the numeral 322. It is mounted upon the block by two clamp plates as is clearly shown.

To each side of the punch 232—— [130]

The Court: This is 322?

The Witness: That is 322, your Honor, and the ram is the light colored member to which that is attached by the two clamp plates or fastening plates.

To the right hand of the cutting die 322 may be seen the cam plate 498 which has the tapered roller edge.

The Court: You can see all four cam plates?

The Witness: Yes.

The Court: Two for each unit of the machine?

The Witness: Yes, two for each unit of the machine and all are carried by the front face of the ram.

The little blocks—rectangular blocks which are of rather light color below the tapered ends of the cam plate 498, is the guide housing which supports the jaws or clamp blade 524—the very forward end of the clamp blade 524 can be seen as it projects from the guide housing in which it is slidably mounted.

The Court: This one here?

The Witness: Yes, your Honor.

The Court: I will mark it.

The Witness: 524, your Honor. And it is the closing cam that closes the zipper element on the tape.

(Testimony of William A. Doble.)

There is one on each side of the central portion of the zipper forming, cutting and fastening unit as is shown in Plaintiff's Exhibit 4, plate 3. The cam blocks 498 which are [131] mountably on the face of the ram and have the cam faces 504 engage the yellow clamp blades 524 or as referred to in the claim as the yellow jaws, so as to move the yellow jaws inwardly or toward each other to clamp the legs 466 of the zipper element onto the green bead of the tape.

As I have pointed out the tape is numbered 172 and the bead is numbered 174 and the legs are numbered 466. That is the dark pink or red of the zipper which is about to be fastened onto the green bead 174.

Now, directly below the mechanism which we have just been speaking about and referring back to Plaintiff's Exhibit 13-H of the Lipson deposition, there are two sliding members which appear as light colored rectangular blocks which are mounted below that—your Honor, that is it right here—which are mounted in a groove which extends across the base of the machine. One of these blocks, the left-hand one of the right-hand unit is securely fastened to the base of the machine while the opposite block is yieldably mounted to press the tape between the two adjacent surfaces of those blocks so as to give a certain amount of friction to the tape during its passage up through the machine.

They also act to guide the tape in a fixed position

(Testimony of William A. Doble.)

adjacent to the forward end of the metallic strip.

The Court: Is that before the legs of the zipper unit are attached to the tape or afterwards? It is before, is it [132] not?

The Witness: Before, so as to stretch the tape and hold it in that fixed position under certain tension during the operation of the machine.

The Court: Are those objects which are shown on the accused device also shown in the patent?

The Witness: Yes, your Honor.

The Court: '793?

The Witness: Yes, your Honor. I will point them out to you—'793.

I called attention to them yesterday but I will point them out. I refer first to Figure 7 appearing on sheet 3 of the drawings of the Silberman patent '793 and the right-hand blocks which are referred to are designated by the numeral 376.

The Court: Wait a minute.

The Witness: Pardon me, your Honor.

The Court: You said the right-hand block. You mean the left-hand block?

The Witness: Yes, left-hand block.

The Court: Left-hand block of the right unit?

The Witness: That is correct, your Honor.

The Court: 376.

The Witness: Yes, 376. And the left-hand mechanism which includes the block and spring and adjusting screw and another block or member is shown on the right-hand side of the [133] tape or to the right of the fixed block 376.

(Testimony of William A. Doble.)

The Court: Shown to the right of—what number is given to that?

The Witness: It is 372. No. 372 is defined in the patent as a tension device.

The Court: Yes.

The Witness: And the arrow indicates the entire structure.

The Court: I see that.

The Witness: The right-hand portion of the unit includes a number of items which I don't think we need to go into particularly at this time.

Now, I would also refer to Figures 55 and 54 appearing on sheet 8 of the drawings and there the movable block, friction block is designated by the numeral 388.

You will note that it is provided with a finger 401 which extends outwardly from the left-hand side of Figure 55. That finger 401 is the little pin or fixture which extends outwardly from the right-hand resilient or adjustable spring weighted block in the tape tension mechanism as shown in Plaintiff's Exhibit 13-H of the Lipson deposition.

The Court: Right here?

The Witness: That is correct, your Honor.

The Court: As I have stated, the figure 401 also appears in Plaintiff's Exhibit 13-H of the Lipson deposition as extending outwardly through the supporting housing for the [134] friction block 388.

The surface of the block itself can be seen

(Testimony of William A. Doble.)

through the elongated slot through which the pin 401 extends.

The Court: We don't need anything more on that, do we?

The Witness: I don't think so, your Honor. In other words we find in Plaintiff's structure as shown in Plaintiff's Exhibit 3, the Silberman patent '793, the tape guide and friction means and we find the same structure substantially in identically the same form in the Lipson machine as depicted in Plaintiff's Exhibit 13-H of the Lipson deposition.

Now, turning next to Plaintiff's Exhibit 13-I of the Lipson deposition, it is another view of the ram and I do not feel at this time it needs any further explanation. It clearly illustrates the ram and the punches carried thereby.

Photograph 13-J of the Lipson deposition illustrates a closer up view of the front face of the ram, the tape extending upwardly adjacent to the front face of the ram passing through the friction means below the ram up through a slot in the die block carried by the base of the machine in position to receive the elements as they are formed and clamped upon the tape and then up over the tape feed roll and it indicates the tension applied to the tape and the tape between the friction element and the tape feed wheel is taut and pulled straight, whereas you will notice the tape on the downwardly extending section after it has passed over [135]

(Testimony of William A. Doble.)

the wheel is loose and is wavy in form showing it is not tensioned.

Other than the point which I have just indicated I believe that we may pass to the next photograph which is Plaintiff's Exhibit 13-K of the Lipson deposition and is a three-quarters end view of the fly wheel end of the machine and here we can see the main drive shaft which is designated in the patent by the numeral 30.

The Court: You can see just the end of it.

The Witness: You see just the end of the shaft, your Honor.

The Court: And what is the number on the patent?

The Witness: 30, your Honor.

The Court: All right.

The Witness: I would also like to call attention to the similarity in the shape of the housing, the ram, the guide for the ram, the tape feed, the wire feed, the punches—in other words the entire structure bears a very close similarity, if not an identity, to the structure of the Silberman patent, Plaintiff's Exhibit 3 in suit.

I will next refer to Plaintiff's Exhibit 13-L of the Lipson deposition and in this photograph I will refer to the left-hand unit because for that particular unit the supporting or guide housing for the closing jaw or clamp blade 524 has been removed so as to clearly show the clamp blade itself. [136]

The clamp blade is the right-hand portion—

The Court: This part here?

(Testimony of William A. Doble.)

The Witness: That is right, your Honor, extending all the way—the whole blade—that is the blade unit extending to the right from the tape which extends through the position on which the elements are fastened.

The Court: That is 524? [137]

A. That is 524, your Honor.

It may be also observed at the post which extends upwardly from the rear end of the unit, to which there is a spring mounted. The spring retracts the blade after the element closing operation.

Now, we find——

The Court: Is this the other jaw of that same unit?

The Witness: Yes, your Honor.

The Court: The two jaws don't look like they are going to come together. They look like they are spaced one in further to the machine. It looks like jaw 524 is to butt against some other device here.

The Witness: I believe the reason for that is in moving the housing the unit probably was not put back in its exact location, because normally the adjacent ends of the two closing jaws are directly opposite one another.

In the Lipson structure, as well as in the plaintiff's structure, as illustrated in this Silberman patent '793.

The Court: They are directly opposite?

The Witness: They are directly opposite.

(Testimony of William A. Doble.)

I would like to point out in the Silberman patent '793 the spring which retracts——

The Court: On the picture 13-L to the Lipson deposition we are talking about this pin here (indicating)?

The Witness: I was talking about that pin there. But [138] both pins are the same. One shows more clearly.

The Court: All right.

The Witness: In referring to the Silberman patent '793 and to Figs. 39 and 40, which show the closing or clamping blade, that is which clamps the units, Fig. 40 illustrates a pin 532 extending outwardly from the side of the clamp plate.

Have you found that, your Honor?

The Court: Yes, I have found it.

The Witness: Fig. 40, the little pin 532. That pin extends through the slot which can be clearly observed in Figs. 37 and 38 in the guide housing or guide block 510, which supports in sliding manner the clamping blade on the base of the machine.

The Court: The only difference is that here, in the accused device, the pin is in a vertical plane, while in the Silberman patent '793 the pin operates on a horizontal plane?

The Witness: That is correct, your Honor.

In Fig. 21 the spring 536 may be clearly observed, which acts against the pin 532 of the clamp member to retract the clamp member after the clamping operation has been performed.

So in each case we find the spring 536 operating

(Testimony of William A. Doble.)

for the same purpose, namely, to retract the clamping blade or jaw after the closing operation.

Q. (By Mr. Leonard Lyon): Were you present at the taking [139] of these photographs, Exhibits 13-A through 13-L to the Lipson deposition, and were they taken under your direction?

A. Yes, sir.

Q. And do they correctly illustrate the Lipson accused machine? A. Yes.

Q. Now, will you turn to Exhibit 14 to the Lipson deposition and state by whom it was made and what you had to do with it, and whether or not you have checked it and found it to be a correct representation of the accused machine?

A. Yes, sir. This is a print from a drawing made by Mr. Jim Oswald, and Mr. Oswald was present at the time we took the photographs of the Lipson machine. We observed the operation of the machine, he observed it, and I pointed out to him the different features of the machine, and then Mr. Lipson supplied Mr. Oswald and myself with a number of blueprints illustrating the mechanical detail of the different elements from which his machine was built.

Q. Those are Exhibits 1 through 12 to the Lipson deposition, are they not?

A. Yes, sir. I did not feel that either the photographs or the drawings which Mr. Lipson had given to us clearly illustrated some of the elements of the machine, and I thought we possibly could make a more clear illustration by preparing a drawing

(Testimony of William A. Doble.)

from Mr. Lipson's drawing, and from the [140] dimensions Mr. Oswald took from the machine and from the photographs.

Q. Mr. Oswald was a professional draftsman, was he?

A. Yes, and he still is. He has done considerable work for me. So with that material, and I believe Mr. Lipson also helped Mr. Oswald to some extent in explaining the construction of the machine, Mr. Oswald prepared the drawing which is Exhibit 14 to the Lipson deposition.

Q. You have already testified that the accused machine is either identical or substantially identical with the machine shown in the drawings of the Silberman patent. Is that illustrated and made clear by this drawing of Mr. Oswald, Exhibit 14 to the Lipson deposition?

A. Yes, sir, it is.

Q. I wish you would take the drawing Exhibit 14 to the Lipson deposition and compare it, as quickly as you can, at least the significant elements, with the drawings of the Silberman patent in suit.

A. Yes, sir. I have before me Plaintiff's Exhibit 14 to the Lipson deposition——

The Court: Is this going to be necessary? This is opinion testimony, and the drawings speak for themselves.

Mr. Leonard Lyon: I don't even know if it is contested, your Honor.

The Court: I asked yesterday whether they

(Testimony of William A. Doble.)

would stipulate [141] to infringement, and they said no.

There is a difference in the shape of the punch, the cut-off punch in the accused device, but there doesn't seem to be much difference in operation. Is it still your contention that if the Silberman patent is good, that there is no infringement here, Mr. Mockabee?

Mr. Mockabee: The shape of the cut-off device?

The Court: Generally, the accused machine against the machine shown by the Silberman patent '793, do you contend——

Mr. Mockabee: As far as the two devices have been compared, we do not admit infringement, no, in all the detail that has been brought out.

There is a considerable similarity between the accused device and that defined in the claims of the Silberman patent. There is also considerable similarity between elements of Exhibit 5 and elements which were conceived and first made by defendant. There is going to be some controversy there.

The Court: That is another point. I have that point in mind. In other words——

Mr. Mockabee: Our principal defense with regard to the Silberman patent is invalidity.

The Court: The plaintiff is putting on their case. This evidence that you now propose to offer, in which the witness would compare Exhibit 14 of the Lipson deposition with the Silberman patent '793, and with the accused device, [142] would only be

(Testimony of William A. Doble.)

cumulative to what you have already put on?

Mr. Leonard Lyon: Yes.

The Court: Let's not go into it. Let's wait until we see what the defense puts on, and at that time if we need to go into more detail, we can do it. Is that satisfactory?

Mr. Leonard Lyon: Yes, sir, that is satisfactory.

The Court: All right. We will take a short recess.

Are we going to see this machine operate manually this morning?

Mr. Charles Lyon: Yes.

The Court: Let's do that after the recess, but before our noon recess, and get that phase over with; then we can forget about the machine and return to my own court room.

(Recess taken.) [143]

The Court: Are you ready to run the machine?

Mr. Leonard S. Lyon: Before we can run the machine we have to find a plug that will fit this socket.

I can go ahead with Mr. Doble.

The Court: All right.

Q. (By Mr. Leonard S. Lyon): Mr. Doble, referring to plate 4—excuse me, plate 3 of Exhibit 4, have you illustrated there where you find all of the elements of claim 40 of the Silberman patent?

A. Yes, I have.

Q. In the defendant's accused machine?

A. Yes, sir.

Mr. Leonard S. Lyon: If your Honor please,

(Testimony of William A. Doble.)

there is one group of claims—I am trying to group the claims, your Honor, so it won't be necessary to go through all the other claims.

Referring now to the claims of the Silberman patent, which are in suit, they fall into two groups, the group which is represented by claims 13, 32 to 36, 39 and 40.

I feel we have covered those sufficiently by the showing as to claim 40. I think it would be unnecessary to take testimony as to the other individual claims in that group because it can be shown from the testimony that has been taken on claim 40 and the chart and we can leave that as to a matter of argument. [144]

Now, that leaves claims 1 to 4, 37 and 38 and those claims have some different elements in them from the first group and I would like Mr. Doble to state first whether or not he finds all of the elements of claim 37 in the defendant's accused device. A. Yes, sir, I do.

Q. Will you point out with reference to the defendant's accused device wherein you find the elements of claim 37 in the defendant's accused device?

A. Referring to claim 37 of the Silberman patent, '793, it reads:

“Slide fastener stringer manufacturing apparatus, including means,”

the first element is

“means for feeding a tape in a fixed path past a predetermined position.”

(Testimony of William A. Doble.)

The Court: We have covered that, have we not?

The Witness: I think we have covered that sufficiently, your Honor.

The second element is:

“Means for feeding a metallic member toward that position,”

and I believe we have covered that sufficiently.

The third element reads:

“And means immediately at that position for [145] performing all operations upon the fed member to form slide fastener elements from the fed member and to attach the elements to the fed tape directly from the fed member.”

Q. (By Mr. Leonard S. Lyon): Now, will you comment on the limitation in that claim which is found in the words “immediately at that position” and state how that applies to the defendant’s accused structure, if it does.

A. The definition or specification defined by “immediately at that position” refers to the manufacturing assembly of the units upon the tape. They all take place at that position in the machine.

Q. At what position?

A. At the position that the tape and the metallic strip are brought together, the elements formed and assembled onto the tape.

Q. Read in the light of the drawing and specifications of the Silberman patent what range is contemplated in the word “immediate?”

A. Well, that would mean in that immediate vicinity. If you have three or four heads or pro-

(Testimony of William A. Doble.)

jections formed on the tape I would consider that immediately at that position [146] as distinguished from manufacturing part of the tape in a separate machine entirely distinct from the applying machine.

Q. Do you find that the operation referred to as—do you find that the operation referred to takes place immediately at that position in the defendant's accused machine? A. Yes, sir, I do.

The Court: Do you think the operation of the accused machine and the Silberman patent are identical in that respect?

The Witness: They are identical in that respect, your Honor. There is a slight difference in the Lipson machine. He performs or forms a few more of the heads in the tape prior to the finished element arriving at the position where it is fastened on to the edge of the tape, but whether you put six on or two on or three on in the final outcome I don't believe it makes a particle of difference. So, in that sense I would say they are identical. They are not manufactured by a distant machine or at some great distance from the location in the machine at which those elements are fastened onto the tape.

Q. (By Mr. Leonard S. Lyon): Will you continue with your reading of claim 37 and pointing out wherein you find the response to the elements in the claim in the accused machine?

A. Yes, sir. Continuing:

(Testimony of William A. Doble.)

“The forming means including a base.” [147]
I believe we have covered that and pointed it out clearly with relation to claim 40.

“A ram.”

Likewise the ram has been clearing pointed out in both the plaintiff's and defendant's structures as depicted in Plaintiff's Exhibit 4.

“Means for reciprocating the ram.”

Now, that means or includes the main drive shaft 30 which was most clearly observed in Figure 9 on sheet 4 of the drawing.

The Court: Haven't we covered all this?

The Witness: We have covered it, your Honor, but Mr. Lyon asked me to point out——

Mr. Leonard S. Lyon: The only feature of claim 30 that you did not cover on your chart, where you illustrated the response to claim 40, is that matter of means “immediately at that position” for operating that. We have discussed that, is that not correct?

The Witness: Yes, sir.

Mr. Leonard S. Lyon: And I think it would be unnecessary for me to take the witness through claims 1 to 4 and 38 because they all contain that same limitation, your Honor.

Your discussion of that limitation in claim 37 applies to the other claims, does it not?

The Witness: Yes, sir, in the same way. [148]

The Court: In your opinion the only difference between the second group of claims is this language

(Testimony of William A. Doble.)

about "and means immediately at the position" and so forth?

The Witness: Yes; and a little more specific detail as to the main shaft eccentrics, the connecting rods and their connection to the ram.

Q. (By Mr. Leonard S. Lyon): I think there are some elements in claim 38 which have not been discussed, commencing about line 37 in column 25 of the Silberman patent.

What I am referring to reads:

"Eccentrics of small eccentricity on the shaft rods extending from the eccentric to the ram."

Do you find response to those elements in the defendant's accused machine? A. Yes, sir.

Q. Will you point them out on the photographs, Exhibits 13-A to 13-L to the Lipson deposition, if you can, or you may use Exhibit 14?

A. For the purpose that you have defined, Mr. Lyon, I would prefer to use Exhibit 14 to the Lipson deposition, and to call attention to the main figure in that exhibit, which shows the main shaft 30 extending through the housing of the machine. That main shaft has two eccentrics of small eccentricity, and mounted on those eccentrics are the connecting rods or eccentric rods, which extend upwardly vertically to join the cross head pivot pins, the pivot pins that I have previously pointed out.

Q. Will you turn to the claims of the Poux patent in suit '017? Do you find in the operation of the defendant's accused machine the employment

(Testimony of William A. Doble.)

of the method defined in claim 17 of the Poux patent?
A. Yes, I do.

Q. In the same sense in which you find that method employed in the operation of the machine of the Silberman patent?
A. Yes, sir.

Q. Do you also find similarly employed the methods defined in claims 1 to 4 and 16 of the Poux patent?
A. Yes, sir.

Q. I believe the only element that requires [150] special attention in claims 1 to 4 and 16, as compared with claim 17, is a reference in each of those other claims to removing intervening material. Where do you find a compliance with that element of the method in the operation of the machines—of the accused machines?

A. I find that step in the method accomplished by the cutting off punch which cuts off the leading element as it is assembled onto the tape. And in making that cut which appears as the dotted lines between the dark pink and the light pink portion of the strip that cut-out portion which is thus formed is the material, or you might say is the removal of the intervening material between the two legs of the jaw, which later those legs are closed upon the tape.

Q. You do not find that element present in claim 17 of the Poux patent, do you?

A. No, I do not.

Q. If that element in claims 1 to 4 and claim 16 is interpreted to refer to the formation of the key slot by the removal of waste material, you do not

(Testimony of William A. Doble.)

find response to that in the accused machine, do you? A. No, I do not.

The Court: Where in 16 do you find this language, claim 16 of Poux?

Mr. Leonard Lyon: I believe I do not, your Honor. I should not have included claim 16. It is claims 1 to 4. [151]

I think, your Honor, that completes my examination of this witness, and I think we might now demonstrate the machine.

Are you ready, Mr. Meech?

Mr. Meech: Yes.

(Whereupon the court looked at the demonstration referred to.)

Mr. Leonard Lyon: That completes my examination of Mr. Doble. I tender him to defendant's counsel for cross examination.

Cross Examination

Q. (By Mr. Mockabee): Mr. Doble, in your testimony yesterday you stated that you dabbled around somewhat with machine tools in your father's shop, took an engineering course; did you actually practice as an engineer to any extent, other than your work which you described as that of a patent expert? A. Yes. [152]

Q. Will you briefly outline it, please?

A. I acted as an engineer in the designing of steam power plants, hydrocarbon fuel burning systems; designing of automobiles.

(Testimony of William A. Doble.)

I have assisted in the design of machinery.

Q. What type of machinery?

A. Machines for tying wire bands about boxes, for tying wire strips about boxes.

Machines for preparing pears for canning, machines for pitting peaches.

Q. Would you say that during your career most of the time spent was as a mechanical engineer per se or as a patent expert?

A. Well, I have spent a good deal of time at each. I never stopped to figure out which I spent the most time on. I would take a rough guess of about 50-50.

Q. Have you ever had anything to do with the design of a slide fastener or zipper machine?

A. No, sir, I have not.

Q. With its maintenance? A. No, sir.

Q. Any other mechanical work in connection with it?

A. No, sir—that is any mechanical work relating to the design, building or maintenance of those machines I have not had any personal experience. [153]

Q. Have you had any experience as a machine tool designer?

A. Yes. I have quite a complete shop of my own and I design many special tools for it.

I have also designed in connection with my other work, a number of years ago, tools, fixtures, special equipment for manufacturing various parts.

Q. In other words you have not particularly in-

(Testimony of William A. Doble.)

dulged in any special line of mechanical engineering relating to particular type of machines?

A. Well, at various times I was specializing on various things—whatever happened to come along or would be necessary.

Q. By specializing you mean as a general rule working along certain lines with certain types of machines? A. Well, mechanical engineers—

Q. As distinguished from a single job on one particular machine and then jumping to another job in another field and on to another machine?

A. Well, mechanical engineers are capable of handling any mechanical features that come along for machines that come along for him to handle.

Q. In other words it was general mechanical engineering?

A. Other times generally and other times specifically. On my automotive development it was specific over quite a [154] span of years.

Q. Have you done any work of any kind with regard to progressive dies?

A. I haven't done any work in regard to progressive dies. I have observed during my Army experience there was quite a problem in making cartridge cases. It was finally solved by a series of progressive dies.

The Court: What kind of dies are you talking about?

The Witness: Progressive.

The Court: Progressive?

The Witness: Yes.

(Testimony of William A. Doble.)

The Court: P-r-o-g-r-e-s-s-i-v-e?

The Witness: Yes, where the element is stepped from one die to another through a series of dies to eventually arrive at the desired form.

The Court: That is——

The Witness: A punch press with a plurality of dies.

The Court: Like an old automatic screw machine?

The Witness: Yes—that is a screw machine instead of a punch press operation.

Mr. Mockabee: Progressive dies such as involved in this case where we form first the recess and the projection and then subsequently form one or more other portions of the article.

The Witness: Yes; those are rather common in mechanical fields. We use them for making cartridge cases, for making [155] the link belts for the automatic rifle ammunition and for many ordnance parts during the Second World War, which I was associated with.

Q. (By Mr. Mockabee): Isn't it true that in any punch press using a progressive die you need a base on which to mount the bottom part of the die?

A. Yes, that is correct.

Q. Do you not also require a ram upon which you mount the punch holder?

A. Usually that is the case.

Q. Do you usually find means for progressing the metal upon which the work is to be performed?

A. Yes, sir.

(Testimony of William A. Doble.)

Q. Do you ordinarily find means for raising and lowering the punches to engage the metal which is being worked upon? A. Yes, sir.

Q. Between the dies and also means for synchronizing or co-ordinating the vertical movement of the punches and the feeding movement of the metal being worked upon?

A. May I have that question read?

(Question read.)

The Witness: Yes, the feed of the metal is usually co-ordinated with the operation of the punch head or die carried by the ram. [156]

Q. Isn't it true that in many of these machines the means employed for raising and lowering the punches is an eccentric drive?

A. Yes, in the smaller machines. In the larger machines it is usually hydraulic.

Q. What would you say about machines of short stroke and fairly high speed?

A. Those are usually eccentric driven.

Q. Are you acquainted with that type of slide fastening machine where the interlocking element is formed prior to its attachment to the tape?

A. You mean completely formed as a separate element?

Q. Yes. A. Yes, sir.

Q. Are you acquainted with that type of machine wherein the metal strip from which the elements are formed, is previously supplied with or formed to produce and carry the recesses and projections? A. Yes, sir.

(Testimony of William A. Doble.)

Q. Are you acquainted with early as compared to the patents in this suit, methods of forming slide fastenings and attaching them to tape involving the punching out of the element from a strip and replacing it in the strip in the position from which it was punched and feeding it with the strip to the point where it is attached to the tape? [157]

A. Yes, sir.

Q. These methods I have just mentioned are, are they not, prior to either of the patents in suit?

A. Yes, sir.

Q. Prior to either of the patents in suit?

A. Yes, sir. [158]

Q. Yesterday you testified that you believed that the apparatus disclosed in the Poux patent in suit '017 could be made to operate?

A. Yes, sir, I did.

Q. Do you have any amplification of that as to how this could be done?

A. No, sir, not at the present time. If there is anything specially that you have in mind, I would be glad to answer it.

Q. What would be involved in working out a problem of that type?

A. Well, it would require the provision of means for actuating the head 14; it would require means——

Q. Just a moment, please. Is that actuating means old in the art with regard to the patents in suit?

(Testimony of William A. Doble.)

A. Yes, there have been many means for operating a ram.

Q. All right. Continue, please.

A. It would require means for operating the cutter, which——

Q. Is that old with regard to the patents in suit?

A. Pardon me. I haven't quite finished.

Q. All right.

A. It would require means for actuating the cutters, and means for actuating the closing jaws.

Q. Are those elements, or elements of that type, mechanical [159] combination, old with regard to the patents in suit?

A. No, not with regard to the patents in suit. They are new, in a new combination, as found in the patent in suit.

Q. I am speaking of these elements individually.

A. Individually, if you divorce them from the combination, it means nothing. In the combination of the patent, those elements are new and perform a new method.

Q. I am not speaking of the combination in the patent; I am speaking of these various elements of a machine, are they individually found in the prior art, prior to the patents in suit?

A. Individually in the prior art there are means for cutting material, there are means for forming the material, but in the patent there is a combination of means which produces a new and different

(Testimony of William A. Doble.)

result from those means when they are taken separately from the combination of the claim of the patent.

Q. But they are individually old in the art with regard to the patents in suit?

A. As I said, means for cutting metal are old, and means for forming metal are old per se, if you take them, divorce them from the combination of the patent.

The Court: You are a pretty good mechanic, aren't you? [160]

The Witness: I try to be.

The Court: An engineer?

The Witness: Yes.

The Court: You have a shop of your own?

The Witness: Yes.

The Court: Couldn't you have taken the Poux patent '017 and built a machine that would operate from what you saw there?

The Witness: I am pretty sure I could. I would like to take a try at it.

The Court: And you had one bad feature in the Poux patent, that the cutting device came in cross-wise.

The Witness: Yes.

The Court: But it wouldn't have taken any more than mechanical skill to realize that if you put your cutting device up on top and brought it down on the flat surface, you wouldn't have that?

The Witness: With the Poux patent, he had a square rod or a round rod, and it was satisfactory

(Testimony of William A. Doble.)

to the operation of that particular form to use the side cutters so it would operate.

The Court: Supposing you are going to use a flat rod, couldn't you have built a machine, with your ability, to work on a flat strip by using the Poux patent?

The Witness: Yes, I could do it, knowing the situation [161] as I know it now. And I could practice Poux' method by making just such a structure. In other words, I could take his method as he defined in his claims, and I could build a structure. I might not follow the structure that he showed, but I could build one that would work. And that is what Mr. Silberman did.

Now, I might not build it exactly the same as Mr. Silberman did, but I would make one that would work.

The Court: Go ahead.

Q. (By Mr. Mockabee): In other words, the elements essential to an apparatus for practicing the Poux patent are shown in the Poux patent, is that true?

A. Pardon me. I didn't get that.

Q. The functional elements essential to the practice of the Poux method are shown in the apparatus of the Poux patent, is that true, outside of your operating means and——

A. Yes.

Q. ——and what you might call the incidental mechanical features?

A. The driving means, for example.

Q. Yes.

(Testimony of William A. Doble.)

A. Yes, the structure of the patent shows one form in which the method might be practiced.

Q. With regard to the side cutter of Poux, is it true that vertical cutters for severing strips was known prior to [162] the patent to Poux?

A. Yes. In those machines which made individual elements, some of them used a vertical cutter for separating that element from the strip.

Q. So it would be mere mechanical expedient to utilize a known vertical cutter in conjunction with the remainder of what is shown in Poux?

A. Yes, to accomplish Mr. Poux' method, you could take a cutter, such as we have seen, which we know of in the prior art, and use it to cut the strip. But in doing so, then you practice Mr. Poux' method, and it is a new instrumentality, it has a new mode of operation, and it has a new identity. The old machine couldn't accomplish the method of the Poux patent. So you have created something new.

The Court: What is the new result—that you changed the cutter from horizontal to vertical?

The Witness: There is no new result there, your Honor. The new result is that in Poux you do not detach the manufactured element from the strip until after it is put onto the tape, so that you maintain that important register. Because if you don't maintain that, a large percentage of your zippers may not be good. And that was the experience they had in the old art. And it made a much faster machine, a much cheaper machine. He contributed a

(Testimony of William A. Doble.)

new novel method to the art, which the art did not disclose, or teach. [163]

Sure, you can take a lot of iron and steel and bolts and make most anything you want, but you have to know what you are going to make before you know which bolts and which pieces of steel to use.

Q. (By Mr. Mockabee): Yesterday you testified that in accordance with the teaching of the Poux method you could use a round bar or a square rod, is that true?

A. That is true. The patent so teaches.

Q. Now, the diameter of that bar or rod naturally requires that the vertical and transverse measurements the same, isn't that true? A. Yes.

Q. And that is true of the square rod?

A. That is true of a square rod. That is not true of a strip that is used in the modern machines for making modern zippers.

Q. In what respect?

A. That the dimensions are not equal. The modern strip is relatively wide and relatively thin.

Q. Do you know the reason for that?

A. That is the form that is most desirable for making the modern zipper element. It is easier to form.

Q. How would you manufacture a modern zipper element utilizing the Poux method with a round or a square bar?

A. I wouldn't do it. I would use, just like Mr. [164] Silberman did, I would use Mr. Silberman's

(Testimony of William A. Doble.)

machine to use the flat bar to make the zipper elements. I wouldn't use a round bar or a square bar.

Q. In other words, Poux purportedly teaches a method which is based entirely upon the use of a round or a square bar, is that not true?

A. That is not true. He teaches a method, and in claim 17 he doesn't say the rod must be round or it must be square.

Q. Where does he disclose the use of a flat strip?

A. He does not disclose the use of a flat strip which has a greater width than thickness. He discloses a flat strip which is a square, and if you want to use a different form you can adjust the tools differently. There is nothing in his method that prevents you from using a flat strip.

Q. But there is nothing in the patent which says I can't form elements according to the Poux method from a flat thin strip, isn't that true?

A. There is nothing in the patent that says you can't.

The Court: Well, it is time to adjourn.

Do you expect your cross examination will be lengthy, Mr. Mockabee?

Mr. Mockabee: It will go on for some time longer, I am afraid.

The Court: We will meet at 1:30 this afternoon, and we [165] will meet in my own court room. We will adjourn to my court room at 1:30.

(Thereupon, at 12:05 o'clock p.m., a recess was taken to 1:30 o'clock, p.m.) [166]

Wednesday, March 2, 1955; 1:30 p.m.

The Court: Call the case.

The Clerk: Talon, Inc. vs. Union Slide Fastener, 10450 for further trial.

The Court: You may proceed.

Before we go further in this case, I would like to talk about the issues for a moment and see if I know what we are talking about.

I have only heard one witness. I haven't heard any cross examination and I haven't made up my mind on anything. But it doesn't look to me from what I have seen so far and from these drawings and exhibits that infringement is an issue in this case.

If it isn't an issue in the case we should frankly say so and devote our time to things that are at issue.

It seems to me that there are some interesting questions in the case other than infringement.

Is there any novelty or any invention in the '017 patent? Assuming that there is, is there any novelty or invention in the '793 patent, particularly in view of the disclosures made in patent '017.

Another question is, and I want to be straightened out on it, is the difference between the so-called method patent and the machine patent. [167]

'017 is a method patent but there is quite detailed disclosures of the way a machine would operate.

Now certainly anybody would be entitled to utilize the material in patent '017, which is not protected by the scope of the patent. And if the ma-

chine which was allegedly patented in '793 has substantially disclosed everything so that an average mechanic could take '017 and make a machine, then there is the question as to whether there is any patentability in '793.

That is an interesting question in the case but it seems to me unless you have some point that you want to suggest to the court that will bear on this question of infringement we should get that out of the case.

Mr. Mockabee: There are some questions of infringement with regard to claims 1 through 4 of Poux.

Poux claims a method, including an operation upon a rod specifically, and that is emphasized not only in the patent specifications but in the history of the Poux application.

We do not use a rod. There are apparently differences in the manner in which you have to operate upon a rod as distinguished from a flat strip.

The Court: Well, let us take up the rod for a moment. Assuming you have a valid patent in '017, is there anything but mechanical skill involved in utilizing the strip instead of a rod? And if the '017 patent covers a square flat surface [168] does it make much difference what depth that flat surface is that goes through the machine?

Mr. Mockabee: Only insofar as the patentee specifically and deliberately limited himself to the use of a rod as distinguished from a flat strip.

The Court: Rod or square?

Mr. Mockabee: Well, I meant that as a rod or

square. In specifically following Poux' method and using a strip in it I think we would encounter what we mentioned this morning, something about the difficulty in severing that strip from the side. [169]

The Court: Well, even you and I as lawyers would be enough mechanics to know that if the severing didn't operate properly that way, all you have to do would be to reverse it and sever it from the top down. By analogy, doesn't that apply. Supposing '017 is valid, you wouldn't contend that somebody could come along after '017 and get another patent using a flatter strip, rather than a square rod?

Mr. Mockabee: No.

The Court: You couldn't do that, because of the fact there had been so much disclosure already in '017 that there would be no novelty in the new invention.

Mr. Mockabee: That is correct.

The Court: Then, by analogy, wouldn't it be true that a person who used a flat strip, instead of a square rod, would be infringing?

Mr. Mockabee: The patentee had a right to claim what he felt was his invention. He placed that, as I recall it, without consulting the history, he placed that in the claims by amendment, to escape or get around a rejection of those claims, deliberately placed it in the claims. His argument was, among others, that the round rod particularly had a cross-sectional shape which was very similar to that of the finished element.

Of course, that is true of a flat strip.

The Court: If you contend that there is no infringement, then this is certainly an inopportune time to discuss it, because [170] I should hear the cross examination and hear your evidence on the matter.

I was just wondering whether infringement was legitimately in the case.

Mr. Mockabee: It is principally in connection with those four claims.

The Court: All right. Proceed with your cross.

WILLIAM A. DOBLE

the witness on the stand at the time of recess, having been heretofore duly sworn, was examined and testified further as follows:

Cross Examination—(Continued)

Q. (By Mr. Mockabee): I believe, Mr. Doble, you testified yesterday, and in some respects today, let me refresh that, that the plunger or ram may be actuated by an ordinary punch press, is that true?

A. You are now referring to the Poux patent '017?

Q. Yes, I am.

A. Yes, the patentee says that the head 14 may be operated by an ordinary punch press.

Q. Now, there are several steps recited or stages of formation recited with regard to the element formed by Poux, that is the recess and projection, the key-hole punch, the [171] side notches, the spreading action; are all these things done at the same time?

A. They are all done at the same time, but not

(Testimony of William A. Doble.)

on the same element. That is, the recess and the projection is formed, the key-hole slot is cut, the side notches are cut, and the key-hole is spread. That all takes place on one operation of the ram, but this operation is taking place on a plurality of elements.

Q. But to form one element it has to go through several stages of operation, is that correct?

A. That is correct.

Q. And several operations of the ram?

A. To completely form one element?

Q. Yes. A. Yes, sir.

The Court: Well, that is true also with the accused device?

The Witness: Yes.

The Court: It is true also of '793?

The Witness: That is correct, your Honor.

The Court: While we are at it, let's get this straight. In each of the three devices one stroke of the crank shaft makes one unit?

The Witness: It completes one unit.

The Court: I didn't state it right. At each stroke of [172] the crank shaft in all three set-ups there comes forth from the machine a completed unit attached to the cloth?

The Witness: That is correct, your Honor.

The Court: All right.

Mr. Leonard Lyon: I don't like to interfere, your Honor, but that doesn't mean that the Poux and the Silberman patent take the same number of strokes of the ram to do that complete job.

(Testimony of William A. Doble.)

The Court: I don't know that I agree with you. In each instance one turn of the crank shaft does not by itself make a complete device——

Mr. Leonard Lyon: That is right.

The Court: ——because there is punching going on on a preceding device at the same time an operation is going on on a device that is further towards the working part of the press. But in each case with each turn of the crank shaft there comes off the end a completed unit attached to the fabric.

Mr. Leonard Lyon: I think that's right, but that doesn't tell the picture that I am getting at.

You have an operation, for instance, in the Poux patent of spreading the jaws. There is no comparable stroke or operation in the Silberman patent.

The Court: Well, that is true, except in the Silberman patent there is the cutting out of a piece of metal which [173] leaves jaws.

Mr. Leonard Lyon: That's right. But they are not spread. There is no spread action.

The Court: It is true also in Poux' '017 that there is the cross cutting action and the gripping—leave out the gripping of the legs—but there is a cross cutting action which takes place during part of one turn of the crank shaft, while in '793 and in the accused device the cutting is done on the down stroke of the ram at the same time the punching is done. There is that distinction.

Mr. Leonard Lyon: Yes. And I have in mind as a critical distinction that you cannot with the Poux arrangement cut, whether you cut from the

(Testimony of William A. Doble.)

top or the side, you cannot cut at the same time that you are spreading the jaws. There cannot be an interference between them. There must be two separate operations.

The Court: You probably have a point there. I hadn't thought about that. There is probably that difference.

Well, go ahead.

Q. (By Mr. Mockabee): In relation to that, Mr. Doble, can you describe carefully the severing and clamping operations and their relationship to each other?

A. Yes, sir, I believe I can. And I would refer, first, to the Poux patent '017, and to Fig. 2 of that patent. In Fig. 2 the head 14, which we might call the ram, is in its [174] upper dwell position. The patentee states on page 1, second column, line 28:

"With the next forward movement of the rod the key-hole shaped openings are advanced to the position opposite the cutter 23. This cutter operates in an interval or dwell between the forward movement of the rod and the descent of the punches."

Therefore the machine as shown in Fig. 2 of '017 shows the ram in the position it would occupy wherein all of its actuating elements are away from the rod, they clear the rod.

The next operation would be to advance the cutting element 23 and the closing die 28 to cut from the rod and at the same time clamp the legs or jaws on the element about the tape.

(Testimony of William A. Doble.)

Now, the patentee states in that respect:

“Preferably the severance is between the jaws of one member”——

Pardon me. I forgot to tell you what I am reading from. I am reading from the Poux patent, page 1, column 1, commencing at line 15:

“Preferably the severance is between the jaws of one member and an adjacent member and the members are preferably severed as one of the members is united with the tape. In this way the fabrication is simplified, the operations made more certain and [175] refinements in the members may be accomplished.”

Now, when the patentee states there that the operation is simplified and made more certain, he is explaining the manner in which the rod acts as a handle to retain the end element in correct register with the tape until the legs of that element are secured to the bead of the tape before the cutter cuts the element completely from the rod.

Q. In other words, do you mean that the clamping action is completed before the severance is done?

A. I don't believe that is necessary in the manner in which the patentee describes it. The effective part of the clamping is completed, I will say that. The element is securely fastened to the tape, but it may still require a little bit more to give it its final clamping action. At that time it can be cut, or slightly thereafter.

(Testimony of William A. Doble.)

Q. Why would it require further clamping action at that time?

A. Because the clamping operation is still in effect. And once the legs are clamped almost completely about the bead the element will be pretty well clamped to that element—to the tape, so as to retain its position. Then as long as the position is securely determined on the tape, then the cutting can be complete. [176]

Q. You say its position securely determined on the tape?

A. Yes, sir; and that is determined by using the rod.

Q. You mean its position against vertical sliding?

A. Against vertical sliding and longitudinal sliding, or the misplacement of the element with relation to—it might be tipped up or it might be tipped down.

Q. Does the severing operation begin after the element has been at least partially clamped upon the tape or before?

A. May I have the question, please?

(Question read.)

A. It would begin after it has been partially or completely mounted on the tape—clamped to the tape and not before. It is at least attached sufficiently so it wouldn't be moved one way or another.

So that you kept that made certain, that portion of the paragraph which I just read previously—in other words he wants to be sure that that element

(Testimony of William A. Doble.)

is going to be on the tape and in the right location and he operates his cutter and his clamping means to effect that purpose.

Q. Well, the patent——

A. Now, there is—pardon me, Mr. Mockabee, there is a latitude in which the operation of the cutter and the clamping means—that is the range of latitude that is permissible, as long as the element is definitely and sufficiently [177] clamped to that tape, then you can cut it off but the clamping action may not at that time be fully completed.

Q. Is this all set forth in the disclosures in your Poux patent?

A. It is set forth in the specifications of the Poux patent. I just read it.

Q. Specifically with regard to the beginning and the completion of the clamping and the beginning and completion of the severing operations?

A. Yes. I believe it is. I have just read what I think is the specific definition of it and then we might turn to page 1.

Q. Just a moment, please. I don't seem to find that from what you read.

A. I read from line 15, column 1, page 1 through most of line 21.

Q. It says "Members are preferably severed as one of the members is united with the tape."

Now, does that set forth with any particularity exactly——

The Court: I don't find that.

The Witness: Page 1, line 15.

(Testimony of William A. Doble.)

The Court: Column 1.

The Witness: Column 1, your Honor.

The Court: It starts with "preferably."

Q. (By Mr. Mockabee): "Preferably the severance is between [178] the jaws of one member and adjacent member and the members are preferably severed as one of the members is united with the tape."

The Witness: That is correct. Then it reads on further——

Q. (By Mr. Mockabee): Now, isn't that a stated conclusion rather than a description of exactly when and how these two operations are performed in conjunction with each other?

A. That is the definition of how he plans to operate it. But you should read the balance of that paragraph or the balance of the next portion of that paragraph which reads in this way:

"The fabrication is simplified"

and I understand him to mean by the word "simplified" that he eliminates the hopper, he eliminates the selector for picking the things out of the hopper, for orienting the little separate elements and then feeding those to a separate attaching machine.

That is what that word means to me—"the operation made more certain," and by eliminating the hopper, the loose elements, the selector and by using the rod as a handle he makes certain that that element is going to be correctly positioned on the tape.

Q. Does any of that language teach anyone the

(Testimony of William A. Doble.)

manner and relationship of and between the cutting and the clamping operations?

A. Yes, I would say it did. [179]

The Court: What is the other language you refer to? Where does that appear?

The Witness: On page 1 of the '017 patent, beginning at line 49—we will start there.

The Court: What column?

The Witness: Column 2, your Honor.

“With the next forward movement of the rod these jaws——”

and those are the jaws on the end element,

“are advanced in position over the rib 2 on the stringer and simultaneously with or slightly before the cutters operate to sever the members, closing dies 28 operate upon the open jaws to close them, pressing them into clamping engagement with the rib.”

Now, there he definitely defines that the clamping action will take place before the element is cut from the handle or the rod.

Q. (By Mr. Mockabee): Simultaneously with or shortly before?

A. Yes. That is, the element is clamped on the tape slightly before or simultaneously with the cutting action of the cutter 23, which cuts that particular element from the rod.

Q. Have you had an opportunity to observe just exactly how this takes place in an embodiment of the Silberman [180] invention which you say is an apparatus carrying out the Poux method.

(Testimony of William A. Doble.)

A. Do you mean by that have I seen the dies operate to close the element upon the tape and to cut it from the fed strip? Is that what you mean by that question?

Q. Have you minutely checked into that?

A. Yes.

Q. Because we are dealing with rather minute particles or elements?

A. They are very minute elements, that is for certain, and that is one of the points I took up with at the Wilson plant in Cleveland with the Talon people.

The Wilson plant at that time was part of the Talon organization and we took it up with the chief engineer there and discussed that matter very thoroughly with him and he diagramed or illustrated as best he could on the machine and then diagramed the timing of the parts to illustrate to us that particular operation.

Q. That timing is not disclosed here in the Poux patent, is it?

A. The timing of the Silberman patent or machine is not defined here. What Mr.—

Q. Well, the timing—

A. What Mr. Poux, pardon me, Mr. Mockabee, what Poux defines is the relationship— [181]

Q. In a very, very broad sense, isn't that?

A. No, I don't say it is in a broad sense. I say it is very definite. As I just read he closes dies 28—wait a minute—before the cutter operates to

(Testimony of William A. Doble.)

sever the members. Now certainly that is definite, isn't it?

Q. Or simultaneously with.

A. Pardon me, let me finish. "The closing dies operate upon the open jaws to close them, pressing them into clamping engagement with the rib."

That certainly is definite. It is certainly definite to me.

Q. With regard to the closing dies per se, yes.

The Court: All right, let us go ahead. I can read what is in the patent.

Q. (By Mr. Mockabee): In the severing of the element in the Poux patent is that severing not done at one of the side notches?

A. Yes, it is.

Q. Or from one side notch to the other?

A. Yes, sir.

Q. Is that not correct?

A. That is correct.

Q. Now, opposite the cutter 23 of Poux is a stationary member 25 which we might call an anvil.

A. He calls it a die. [182]

Q. Or a die. It appears as a member with a flat surface disposed toward the rod, is that not true?

A. That is correct.

Q. Now when the cutter presses laterally against the metal in a transverse or horizontal direction, what surfaces bear against the member 25—what rod surfaces?

A. The side surface of rod 8 bears against the die 25.

(Testimony of William A. Doble.)

Q. What are the shapes of those surfaces?

A. Well, in Figure 2 they are round. That is part—the surface is cylindrical. In Figure 3 the surface would be a flat side. That is in Figure 4 there is a square rod shown and Mr. Poux says he can use a square rod or a round rod.

Q. Would not the square rod of Figure 4 have notches in it? A. Yes.

Q. What would be the tendency of the end element to move under the influence of that cutter 23?

A. I believe it would move.

Q. How?

A. Sideways, toward the die 25.

Q. Would there be no other movement?

A. No, I don't think there would be.

The Court: Wouldn't that depend entirely on where die 25 was placed? If die 25 was placed broad enough to not only cover the notch but cover the surface of the rod that lays [183] flat against the rod and forward of the notch and the surface of the rod back of the notch there would be no reason why the end device should move sideways when the cutter went through. It couldn't move, isn't that true?

The Witness: If I understand, your Honor, you are referring to the die 25 being broad enough to support the rod?

The Court: Yes.

The Witness: Well, when the cutter 23 is moved in the direction of die 25 to perform the cutting

(Testimony of William A. Doble.)

operation it would push the end element toward the die 25.

The Court: How could it push it if the rod was flush against the die? Let me give you an example of what I mean. Here is the rod with the notch in it and here is die 25, we will say.

The Witness: Yes, sir.

The Court: Which is big enough to lie flush against the rod. I have it too big—I have too big a notch in there. Flush against the rod and back of the notch and forward of the notch.

The Witness: Yes, sir.

The Court: When the cutting arm goes across to cut at the notch how can it move?

The Witness: Well, your Honor, the die 25 is on the opposite side. I will put 25 there. And here is the [184] cutter. I see you have it there, excuse me. I misunderstood your drawing there.

Now, that isn't the manner in which it is disclosed in the patent. The die 25 ends in alignment with the surface of the concave portion of the cutter.

The Court: Does it say so?

The Witness: Yes, your Honor.

The Court: Where does it say that?

The Witness: Well, if you will look at the figure you can see it right in the figure.

You see the die 25 has a curved forward surface. We will take the forward surface toward the element that is going to be cut off.

The Court: Yes.

(Testimony of William A. Doble.)

The Witness: And you will notice that the cutter 23 has that concave surface numbered 23a. You will notice that the 23a is just to the left of the figure 23.

The Court: Yes.

The Witness: And those two surfaces—that is the convex surface on 25 and the concave surface on 23 are supposed to mesh. That is so you get a shearing action between those two cutting members.

The Court: But the cutter 23 doesn't have to cross that far to cut? It cuts at the notch, does it not?

The Witness: It cuts at the notch, your Honor, but in [185] doing so it is going to force the material of the element that is going to be cut off, that is being cut off, in the direction toward the die 25.

The Court: Is there anything in the specifications which show that that die 25 is to lie entirely posterior of the notch?

The Witness: Well, I could read this part. I think it probably will. Referring to the cutting die. It has a concave cutting surface on one face and preferably a plain cutting surface 23a on the opposite face. It co-operates in connection with the die 25 at the opposite side of the rod.

The concave cutting surface forms a rounded end 24.

And if you turn to Figure—look at Figure 1A you will notice that before the right-hand end of the element 3 is the rounded end indicated by the

(Testimony of William A. Doble.)

numeral 24, but that is a normal shearing action and during that shearing action the front element which is to be cut off will possibly be pushed sideways by the cutter.

The Court: That is the only place you find any mention of that point?

The Witness: I believe that is, your Honor.

The Court: I don't read it as you do because it says it has a concave cutting surface on one side and preferably a plane cutting surface on the opposite side.

The Witness: Yes. [186]

The Court: If you were talking about a description that came within the purview of this drawing it would say "convex on the other side," would it not?

The Witness: Yes. Now, I think what he meant by that, your Honor—unfortunately he used the numeral 23 for both surfaces of the cutter 23.

You see the forward surface is concave and the rear surface or I might say the surface toward us is concave, and that is designated by the numeral 23. The opposite surface of the cutting die is straight and is also designated by the numeral 23.

The Court: 23a.

The Witness: 23a. And what he intends to do by that is to make a straight surface as shown in Figure 1A at—well, just at the point where the numeral 3, the lead line from numeral 3 leads into the front end of that cut-off element.

In other words he gets a straight line on that

(Testimony of William A. Doble.)

portion of the cut where on the opposite portion of the cut he gets the curve as illustrated at 24.

Now, there is one other place in the patent he mentions that. He says—well, I will start on page 2, column 1, line 56:

“By forming the strip with a plurality of interlocking members formed or partially formed, and with a major portion of the side edges of the [187] members unobstructively exposed it is possible to finish these edges and portions of the members with greater facility.”

As shown this adaptability is utilized in the convenient arrangement of the cutting tool 23 by reason of this unobstructed edge. The cutting tools may be made with the concave cutting surface 23a, giving the jaw end of the member an eased or rounded shape. [188]

The Court: Well, that doesn't answer my query. That just says what it says.

The Witness: That is correct, your Honor.

The Court: You said, also, something about the customary shearing action. Now, if this was a solid rod at this place of shearing without a notch, and if die 23 was concave and die 25 convex, and the cutting had to proceed clear through the rod, then I would say there was a shearing action where the concave met the convex at the far side of the rod; but where the cutting only proceeds through that portion of the rod that is left between the notches, then I can't see that there is any shearing action, and 25 to me is only a stop or a block or a die that

(Testimony of William A. Doble.)

holds the rod in position while the cutting goes on.

The Witness: Well, I think your Honor has analyzed that very nicely.

Now, if you look at Fig. 3, I think it will pretty well illustrate the part that has to be cut or sheared off. And the upper surface of the key-hole slot, that is, the edge of the rod opposite the key-hole slot, which is opposed by the die 25, would be held stationary.

The Court: Are you talking about 3?

The Witness: Fig. 7, your Honor, which is the top planned view of two of the elements.

The Court: I thought you said Fig. 3. [189]

The Witness: No, your Honor.

Now, in shearing the element 3 or the member 3 from the end of the rod, the cutter 23 will engage the side of the rod opposite to the die 25 and will——

The Court: Then it cuts two things; it cuts the remaining portion of metal between one unit and another——

The Witness: That's right.

The Court: ——and at the same time it shears off some corners off of the second unit that is coming up.

The Witness: That is correct, your Honor.

The Court: All right. I think I understand it.

Q. (By Mr. Mockabee): But you state that there is a sideways shifting movement of the end element during this shearing operation?

A. I believe there would be.

(Testimony of William A. Doble.)

Q. There is nothing shown to hold that element, and in the specification there is nothing to explain that the end element should be held during the shearing operation?

A. Do you mean against that sidewise—tendency of sidewise motion of the cut end of the last element?

Q. Yes.

A. Well, I can't see anything in the drawing, and I don't remember anything in the specification that makes any mention of that condition.

Q. To use a backyard expression, if we want to put it [190] that way, when you bring an axe down on a piece of kindling, what happens to the two pieces that are cut?

A. Well, several things could happen. It depends on the piece that is going to be cut. It is liable to be cut in half, or the axe will lodge in the block of material that you are whacking the axe against.

Q. I am speaking of a small piece of kindling.

A. You just chop it right in half.

Q. Doesn't the kindling move? A. Yes.

Q. Which way?

A. It depends on how it is supported.

Q. If it is lying on the ground and you are chopping down on it.

A. Then the ends, the portion of the stick that is engaged by the edge of the axe will be forced into the ground.

Q. What about the other ends?

(Testimony of William A. Doble.)

A. The other ends will go up. There is nothing to hold them.

In this case you have the clamping dies 28 holding the forward end of the element which is cut from the rod.

Q. The portions of the element between the clamping dies are rounded, are they not?

A. They are in Fig. 2 and Fig. 3, they would be a flat surface if you used the square rod of Fig. 4. [191]

Q. When the square rod has jaws formed on it, those jaws would extend generally diagonally outwardly as in Fig. 7, would they not?

A. You are speaking about the jaws formed on the end of the element?

Q. Yes.

A. Yes, they would extend outwardly as shown in the planned view of Fig. 7 and there indicated by the numeral 26.

Q. Well, then, would there be any flat surfaces for the closing members to engage and hold the end element against the lateral movement?

A. No, there would be a line contact if the square bar were used, and it would depend on how much pressure was being applied to those jaws as to the amount of resistance to endwise movement of the element during the shearing.

Q. In ordinary mechanics would you consider that a good gripping action to prevent tilting or movement of the axis of the element to an angle?

A. No, I don't think it would be the best.

(Testimony of William A. Doble.)

The Court: What are you trying to prove, if you don't mind telling me?

Mr. Mockabee: That this end element when cut is not held in proper alignment to serve cooperatively with elements adjacent to it and complementary elements on the other tape [192] to form an interlocking assembly, insofar as Poux teaches.

The Court: That, therefore, the Poux machine as shown, incidentally, in the patent, is an inoperative machine?

Mr. Mockabee: Yes, sir.

The Court: If I follow that conclusion, therefore it is entirely possible for a person to come along and invent '793, a machine that does it, is that right?

Mr. Mockabee: No. I am speaking of a method. And whatever is shown in Poux' apparatus, which Mr. Doble says he can build and make operate, is also shown in Silberman's '793.

The Witness: May I correct that just a moment, Mr. Mockabee?

I didn't say that I could make a commercially successful machine out of this Poux device. I said that Mr. Silberman was the first one that made a commercial machine out of it. I didn't. You would have to reorganize the structure as shown in Fig. 2 of the Poux patent to make a commercially successful machine.

Q. (By Mr. Mockabee): Granted.

A. And that Mr. Silberman did.

Q. Granted. But for the purpose of argument,

(Testimony of William A. Doble.)

Poux shows very generally, and I have maintained broadly and vaguely, a method of making elements out of a bar, primarily a round bar, and he shows apparatus in connection with it. [193]

Now, whether or not the apparatus shown in Poux is a complete working machine or a commercially successful machine, it does not amount to patentable invention to utilize what there was that Poux taught in arriving at the Silberman apparatus, and in view of other prior art which we are going to present?

A. I can answer, I think, very fully, Mr. Mockabee.

It took the arts 13 years after Mr. Poux to be able to make a successful commercial operating machine, which incorporated the Poux method.

Q. Upon what do you base that statement?

A. On a study of the art. Mr. Silberman was the first one that came along and made a commercially successful machine incorporating the Poux method.

The Court: Well, I am kind of lost on your positions.

Your position, as you told me yesterday, is that a machine could be made from the Poux patent '017, that it would be impractical and that it would be expensive, because of waste material, and so forth; is that right?

The Witness: That is correct to this extent, your Honor: I could make it, but that wouldn't

(Testimony of William A. Doble.)

be a commercial machine. It would operate, but it still wouldn't be a commercial machine.

The Court: Why?

The Witness: Because you would have to rebuild the [194] Poux machine in the manner that Silberman did.

First of all, I might call your Honor's attention to the fact that the ram stands still in its dwell position free of the rod during the cutting and clamping. Now, in Silberman, all of those operations take place during the operation of the ram, which gives you two important things. One is the manufacture or formation of the unit, and the second is the rams and dies—I mean the dies and punches carried by the ram and the base clamp, you might say, the handle or the rod of the strip firmly to hold it in correct position when it is cut. In other words, to take Poux and make an operating machine would require invention. That is, as he has disclosed it in Fig. 2 of his patent.

The Court: I don't want to lose my thought.

Now I have your general position.

Apparently it is your position that a machine could not be made on the basis of what Poux disclosed in '017?

Mr. Mockabee: His method could not be operated. But for whatever the Poux patent is worth, and with the knowledge of the art, it is well within the province of one skilled in the art to produce the Silberman apparatus.

The Court: All right.

(Testimony of William A. Doble.)

Before we pass this subject, I have another question to ask. Referring to '017, Fig. 2, referring to jaws 28, there is apparently one on either side, which its function is to [195] close the legs around the fabric 2——

The Witness: That is correct, your Honor.

The Court: ——I assume that they operate simultaneously from either side.

The Witness: Yes, your Honor.

The Court: The drawing being in perspective, it is difficult to show where they hit, but it looks as if they hit on the legs, and that 28 on either side does not touch the body of the rod, at least until the legs are closed.

The Witness: Yes, your Honor.

The Court: Is there anything said in the patent about that?

The Witness: No, not that I can remember.

The Court: Now, it would be mechanically almost impossible, would it or would it not, to take 28 and have it perform the operation it is to perform if you extended it down so that it hit the rod, as well as the so-called legs? In other words, if this one unit 28 hit both the rods and the legs at the same time there would be no closing action, would there?

The Witness: Well, there would be a closing action to the point that the jaws or the clamping member 28 hit the body of the rod, then it would stop.

The Court: I say if 28 hit the jaws and the rod

(Testimony of William A. Doble.)

at the same time, simultaneously, then there would be no closing action, would there? [196]

The Witness: That is correct.

The Court: Because the rod would keep 28 from moving forward, keep it there from compressing the legs?

The Witness: That is correct, your Honor.

The Court: And if 28 coming in on the legs from either side hit the legs first, then you would get no support on the rod, until the legs had closed sufficiently for 28 to hit the rod?

The Witness: They will have contacted the jaws—if you look in Fig. 7, you see the jaws 26 or legs are spread outwardly from the body of the element, which would be the diameter of the rod, so there is considerable closing action there before the clamps could contact the side of the rod. Also, we must consider the thickness of the tape, its position between the legs. During that clamping action the clamps engage the jaws, and also the cutters are engaging the opposite end of the element where it is going to cut it off, it is going to cut that element from the rod, so you get that supporting action from both the clamping jaws and the cut-off mechanism.

The Court: But it would only take mechanical skill, would it not, to take a unit like 28 coming from either side and on one stroke of the crank shaft have it move in midway of the new object, the new unit at the end that is being cut [197] off, and clamp it midway between the legs and the

(Testimony of William A. Doble.)

portion to be cut off, and at the same time have another unit parallel with 28 move in, and after the clamp had been set, then set the legs?

The Witness: Well, there is a complication here, your Honor, in the size of these elements. Remember, when you look at one of the little elements, it is hardly larger than a big flea, and it is very difficult to get punches small enough that would be operative to operate in such a small area.

The Court: They have already done that with punches and dies.

You don't think that is a good objection to that suggestion, do you?

The Witness: I really do, because this is such a small place that you are working on that it would be difficult.

The Court: Aside from the mechanical difficulty of having space enough to get something in there with a clamping action, in your opinion wouldn't it only take mechanical skill to have a clamp something like 28 coming in from either side to grasp that unit in the middle, prior to the time that a parallel object came in and closed the legs?

The Witness: I don't believe it could be done commercially. I think you might make a trick apparatus that would do it. [198]

The Court: I didn't ask you whether it could be done commercially, but I wondered whether in your opinion it would be a mere mechanical skill to do that.

(Testimony of William A. Doble.)

The Witness: I think it would take a great deal of skill to make such a structure.

The Court: Go ahead.

Q. (By Mr. Mockabee): In the shearing or cutting or severing of the end element, does the cutter have to pass entirely through all of the metal which is being cut? A. No, it does not.

Q. Is that due to the natural shearing action that occurs when a knife and a die or an anvil are placed in proper relative positions in usual shearing?

A. That is correct. It is not necessary for the punch to pass completely through the material.

Q. In other words, the element then would be severed from the bar before the cutter 23 has completed its cutting movement, is that correct? Or before it has passed entirely through the metal being severed.

A. Well, taking your last question and eliminating the first part of your question, the element would undoubtedly be sheared loose before the cutter passed completely past the material of the bar at the point where it was being cut.

Q. And you say, I believe, also, that before any appreciable clamping of the legs on the tape occurs, there is [199] a considerable movement of the closing members 28 and movement of the jaws 26, is that correct?

The Court: The jaws aren't 26, are they?

The Witness: I was going to ask to have that question read.

(Testimony of William A. Doble.)

Mr. Mockabee: They are marked 26 in Fig. 7.

The Court: By jaws do you mean——

Mr. Mockabee: Just of the element.

The Court: ——the legs?

Mr. Mockabee: Yes.

The Witness: Now may I have the question read, please?

The Court: Read it, please.

(The question referred to was read by the reporter, as follows: "Q. And you say, I believe, also, that before any appreciable clamping of the legs on the tape occurs, there is a considerable movement of the closing members 28 and movement of the jaws 26, is that correct?") [200]

The Witness: Yes. I believe there will be some clamping action as soon as the jaws start to move inwardly.

If we look at Figure 7 you will see the bead of the tape is nested very deeply into the notch between the legs. So that the first, the initial movement of the legs would tend to clamp the element onto the bead of the tape.

The final clamping, of course, would take place when the ends of the element—that is the ends of the jaws of the element, the jaws 26, are brought into contact with the stringer portion of the tape, so that it completely encloses the bead or rib 2 of the tape element.

Q. (By Mr. Mockabee): Referring to Fig. 7. The element jaws 26 are shown with divergent

(Testimony of William A. Doble.)

inner straight side wall portions. Do you see that?

A. Yes, they are.

Q. Would it not be necessary for those divergent side wall portions to be swung toward each other until they become at least parallel before they start to grip the rib of the tape?

A. I don't believe so. I believe a pinching action will start as soon as the jaws are pressed toward each other.

Q. Is the bite or the junction between the inner walls of those jaws on the element notched or provided with corrugations or is it smooth and rounded?

A. Well, it is relatively smooth. It is a sheared [201] surface and it may have certain lines, shearing lines in it and a certain amount of roughness but it is not corrugated by some mechanism which would put ribs in the interior surface of the jaws.

Q. Well, that then would cause the diverging jaws to grip the rib of the tape?

A. Because they would start to pinch on the rib of the tape as they are being closed.

Q. What holds the rib of the tape down between the point where the jaws come together?

A. The guide below, the guide wheels below the attaching location which are shown as the tension roller 13—they would tend to hold that tape right into the notch formed between the jaws 26.

Q. Those guide rollers are shown some distance below the jaw closing members 28, aren't they?

A. Well, that is a relative term. I don't know

(Testimony of William A. Doble.)

how far they are down. They are a very short distance down from the clamping position.

Q. And the tape and rib are flexible, aren't they? A. Yes, they are.

Q. Do you think it would be necessary in following the Poux method particularly with the use of round rods, to provide some means which would firmly grip that rod against rotational movement and also permit its step by step advancement? [202]

A. Yes. The feed rollers 29 positively grip the rod 8 and operate intermittently to advance the rod through the step by step process in the manufacture of the elements.

Q. The rod is shown as round in Figure 2?

A. That is correct.

Q. Is it not? A. Yes, sir.

Q. And the channels in the peripheries of the feed roller 9 are "U"-shaped or rounded in cross section, are they not?

A. Yes, sir, they are.

Q. And they are smooth, are they not?

A. Well, I can't tell from the drawing whether they are smooth or not. They might be.

Q. The drawing does not show any corrugation or gripping means, does it?

A. Not that I can see. There are some shading lines but I wouldn't want to say that that is part—

Q. They are the ordinary shading lines such as we usually find in patent drawings, are they not?

A. More or less, yes.

(Testimony of William A. Doble.)

Q. How many steps are gone through in the completion of a single element in the Poux method—how many progressions of the rod? [203]

A. Three.

Q. The drawing in Figure 2 shows one end element, in back of that is a keyhole slot and a recess, is that not true? A. That is correct.

Q. And in back of those are another set comprising a keyhole slot and a recess, is that not true?

A. That is true. Those are the three that I mentioned.

Q. Upon the downward movement of the ram another keyhole slot and recess is formed, is that not true? A. Yes, that is true.

Q. And the end element has just been severed, is that not right?

A. No, sir, that is not true.

Q. It is still on the rod?

A. It is still on the rod.

Q. That would make four steps, wouldn't it?

A. No, because it would have been severed before the downward movement of the ram.

That I think should be understood very clearly, that the cutting off action has no relation to the position of the ram other than its dwell position where the tools are retracted from the surface of the rod.

The cutting action takes place while the ram is in its up position.

Q. So that the element is cut and moved out of position [204] before the ram is moved down-

(Testimony of William A. Doble.)

wardly to form the next recess and the next key-hole slot?

The Court: I thought you just told me that the cutting occurred while the ram and the punches were in the down position and that that was one of the things that gave security and held the rod in shape.

The Witness: No, not the Poux patent. That is the Silberman patent.

The Court: Is there any reason why that couldn't occur in the Poux patent?

The Witness: Oh, yes.

The Court: Why?

The Witness: Many reasons.

The Court: Why?

The Witness: Because the element has to be cut off before the spreading punch, for one thing, can come down and spread the legs of the next succeeding element.

The Court: Now, is there any other reason? I agree with you on that one.

The Witness: Let me see. Now, another reason is, of course, if the ram were down you couldn't operate the cutter because it would interfere with the spreading ram 27. You would get an interference there.

The Court: It would depend on how high 27 was above the rod—the height of 23 and so forth, would it not? [205]

The Witness: Oh, I don't think so, your Honor. I think if you had the ram down to where the

(Testimony of William A. Doble.)

elements are engaging the surface of the round rod to clamp it, then you would get interference between the cutter and the spreading die or spreading plunger.

The Court: All right.

Q. (By Mr. Mockabee): Then the distance within which a single element is formed under the Poux disclosure is that of three interlocking elements, is that correct?

A. I don't believe I understand the first part of that question. May I have it read, please, your Honor?

The Court: Read the question.

(Question read.)

The Witness: That appears to be so.

Q. (By Mr. Mockabee): Then with the apparatus in the position of Figure 2, upon a further or another downward movement of the head 14, to produce another keyhole slot and recess, the keyhole slot 20 immediately to the left side—immediately to the left of the side notch will be opened, is that correct?

A. No, that is not correct. As I pointed out before the head 14, which we call the ram, is retained in its upper position at the time the completed element is severed from the rod.

Q. Yes. [206]

The Court: I don't think you understood the question. Will you read the question?

(Question read.)

(Testimony of William A. Doble.)

The Witness: My answer is correct. You can't spread the legs until it is cut off.

Q. (By Mr. Mockabee): You have said that your end element is cut off when the head 14 is raised, is that not true?

A. Yes, the end element is cut off while the head 14 is standing still up above its operative position.

The Court: This question now concerns that situation. It has been cut off. Now, a downward movement of the head would give you the recess and projection made, the keyhole punched and the jaws spread.

The Witness: That is correct, your Honor. I have so stated several times.

Q. (By Mr. Mockabee): I just wanted to make sure of that.

Now, referring to Figure 2 of Poux, is it not true that the proportions and dimensions of the apparatus and the material worked upon are greatly enlarged?

A. Yes, I believe they are.

Q. So that the tools 17, 18, 21 and 27 which are all supported by the head 14, all lie within a distance at least no greater than the length of three elements—zipper elements, is that correct?

A. No, that is not correct. They would lie within the length of four zipper elements,—the completed one which is being attached to the tape, the next keyhole and then there is a next keyhole and then there is a position where the succeeding keyhole

(Testimony of William A. Doble.)

will be formed before the rod is moved forwardly to bring the jaws of the rod into engagement with the tape so the span, you might say, in the manufacture and applying of the elements comprise four elements—the length of four elements.

Q. What tool on the head 14 lies within the end limits of the end element upon the tape?

A. There are none.

Q. Therefore it does not lie, does not include the length of that end element, does it?

A. Well, it depends upon where we are taking the distance from.

The Court: He said the tools attached to the head.

The Witness: The tools attached to the head cover a span of three elements.

Q. (By Mr. Mockabee): Thank you.

How does the ram and its tools for operating upon the stock and forming an element in the Silberman apparatus compare with that of Poux?

A. Well, there is a great deal of difference and I will point that out. [208]

In doing so I will refer to Plaintiff's Exhibit 4, plate 2 thereof.

We note first that there is a ram which we have pictorially illustrated by a relatively heavy red line and given it the reference number of 272.

That ram carries a cutting die, a forming die and two cam plates.

The Court: The cam plates 498.

The Witness: Yes, cam plates 498. The head or

(Testimony of William A. Doble.)

what we may call the ram 14 of the Poux patent does not include the cam plates 498. It does not include the cutting die 322 and on the other hand the head 14 of the Poux patent does carry a key-hole punch 19.

That is not found in Silberman. The head 14 of the Poux patent also includes two side punches which are not found in the Silberman patent.

The Court: Side punches?

The Witness: Yes, your Honor, they are the 21. They take a little notch out of the sides of the round bar.

The ram 14 or the head 14 of the Poux patent also carries the spreader punch 27.

The ram has no relation or no connection to the operation of the element closing clamps or jaws.

In the Silberman patent because the ram carries the cam [209] plates 498, which co-operate with the yellow closing jaws, the downward movement of the ram acts to close the jaws on the tape.

The downward movement of the ram in the Poux patent does not cause the closing jaws or closing dies to fasten the element onto the tape.

The ram in the Silberman patent carries the element cut-off die.

The ram in the Poux patent does not carry a cut-off die. In fact the cut-off die in the Poux patent cannot be operated during the down stroke of the head 14.

The downward stroke of the ram in the Silberman patent causes the entire manufacture of the

(Testimony of William A. Doble.)

element—the closing of the legs of the element upon the tape and the severing of the element from the metal strip.

That is not in Poux—that is not so in Poux. The downward movement of the ram clamps the metallic rod or the metallic strip between the cut-off die or the cut-off punch which is carried by the ram and its co-operating cutting die which is carried by the base.

The same is true with the head forming punch and die, one element of which is carried by the ram and the other by the base.

During the movement of the ram downwardly the pink metallic strip is securely clamped between the co-operating dies [210] and cutting—and the die for forming the heads and the cutting dies for cutting the element from the strip so that you are enabled to run the machine at great speed because the pink metallic strip is firmly gripped in a vise-like manner between the cut-off element and the head forming element during the time the element is fastened to the tape.

Now, you don't find that co-operation in the element in the Poux patent. [211]

Q. Is it true that in both Poux and Silberman there is disclosed a timed functional relationship between the ram operation to form the element and that of the cutter and the jaw closing?

A. There is a timed relationship, yes, but that timed relationship is not controlled by the downward movement of the ram, as it is in the Silber-

(Testimony of William A. Doble.)

man patent. And that is a very important feature of the Silberman disclosure, controlling the entire manufacturing operation during a single down stroke of the ram, which is only 180 degrees revolution of the main drive shaft. The entire element is formed during that short interval of time, which if you are making 2,000 elements a minute, that is the machine is running 2,000 revolutions a minute, it will be $33\frac{1}{3}$ actuations of that ram during a second.

Now, that is moving pretty fast. And in order to keep control of that element so it won't be thrown out of the machine, or the strip lifted up, because of that very rapid vibration, it must be clamped and held firmly. That is what Silberman does. Until the element is fastened onto the tape. And that is what Poux does not teach.

The Poux machine could not be a fast operating machine. At the best, it could only be a very slow operating machine.

Q. But the fact remains that Poux discloses this timed relationship between the head or ram operation and that of the [212] cutters, is that not true?

A. That is true, but it is a different relation than you have in Silberman for this reason—

Q. I merely ask—

A. Pardon me. Let me finish my answer. The ram stays stationary, the cutters operate, the cutters retract and then the ram operates; whereas in Silberman the ram makes its down stroke and it causes all of the elements to operate during the

(Testimony of William A. Doble.)

time that it is operating. So there is a different relationship there. True, they are timed, but they are differently timed.

Q. Does Poux say that the ram stays stationary?

A. Yes, sir, he does. And I will read that to you. On page 1, line 27.

The Court: Column 1?

The Witness: Column 2, your Honor.

“With the next forward movement of the rod the key-hole shaped openings are advanced to the position opposite the cutter 23. This cutter operates in an interval or dwell between the forward movement of the rod and the descent of the punches.”

The descent of the punches is the downward movement of the ram which carries the punches into engagement with the ram to manufacture the element.

Q. (By Mr. Mockabee): That doesn't say that the ram stops. [213]

Q. What is a dwell?

Q. A dwell could be a period while the ram is going up, is that not true? A. No.

Q. According to this statement.

A. No, it is not.

The Court: “Interval” refers to time, does it not?

The Witness: Yes, your Honor. That is the length of time.

The Court: It might be a space on a plane, an

(Testimony of William A. Doble.)

interval, or would it be more apt to be a period of time?

The Witness: A period of time. But a dwell means something standing still, to me.

Q. (By Mr. Mockabee): The patentee says interval or dwell. I think he is using that more or less simultaneously.

The Court: Is "dwell" a technical word used in patent art?

Mr. Mockabee: I guess a lot of words are used in patent art.

The Court: Mr. Witness?

The Witness: It is used quite often, your Honor. I have used it many times.

The Court: A word of art?

The Witness: No. It has a common meaning.

The Court: What do you mean by a dwell?

The Witness: I mean, when a member has an operating cycle of movement, and it stops between portions of that operating movement, I would call that a dwell.

Now, this head moves up and when it moves up there is a dwell, it stops there while certain other operations take place, and then it is moved down after that dwell period to perform its cycle while the other instrumentalities are moved out of the way.

The Court: Would you use the word "dwell" only in the event the machine stopped?

The Witness: Or substantially stopped.

The Court: Well, what about the interval be-

(Testimony of William A. Doble.)

tween the time the piston is going up and coming down, but where there is no stopping except, I suppose there would have to be a stopping, mathematically, when it ended its upward movement and started down, there would always have to be a stopping, wouldn't there?

The Witness: Yes, there would.

The Court: Even——

The Witness: Even in a reciprocating engine that is going very fast.

The Court: Therefore, there would always be a dwell?

The Witness: That is right.

The Court: Would you refer to dwell as merely that little [215] interval when the piston was at the top of the stroke and standing perfectly still, or would you refer to the dwell as the period of time when the piston was on its way up and before it got down into any position of proximity to the operation?

The Witness: I don't think the patentee uses the word "dwell" in that sense. I think he means after he has moved the ram up out of the way of the rod it stops, stays there. He performs the other operations, and then after the other operations are completed and the instrumentalities removed from the strip, the ram then takes the next cycle in its operation.

That would be my understanding of what the patent teaches.

Q. (By Mr. Mockabee): Mr. Doble, in consid-

(Testimony of William A. Doble.)

ering that same sentence that you read from the specification of Poux, they are speaking, aren't they, of the interval or dwell, not of the head 14, but the interval or dwell between the movement of the rod and the descent of the punches?

A. Well, it says, "and the descent of the punches," so it means there is a dwell in the movement of the rod. There is likewise a dwell in the movement of the head downwardly to perform its manufacturing operation, and the interval.

Q. Have you overlooked the word "between" in that sentence? The interval or dwell between the movement of the rod and the descent of the punches? [216]

The Court: I can read the language. It looks clear to me that that is what it says. In fact, I hadn't noticed that it actually defines what the interval or dwell is by the following words.

It is time for a recess.

We may stop a little early this evening, instead of going on to 4:30. We will see.

(Recess taken.)

The Court: Proceed.

Q. (By Mr. Mockabee): Mr. Doble, referring to claim 1 of the Silberman patent, and comparing it with the disclosure in the Poux drawing, is it not true that Poux shows means for feeding a tape into a predetermined position?

A. Yes, sir, Poux shows such a structure, such a means.

Q. And means for feeding a metallic member

(Testimony of William A. Doble.)

toward that position? A. Yes, sir.

Q. And means immediately at that position for performing all operations upon the fed member to form slide fastener elements from the fed member?

A. In the Silberman patent there is a different organization of means illustrated and taught than there is in the Poux patent.

Q. Does claim 1 call for any specifically different organization? [217]

A. Yes, I think it refers to the means which are defined in the specifications and illustrated in the drawings of the Silberman patent, and those means have a different mode of operation and are structurally different from the means shown in the Poux patent.

Q. I am speaking of what is being claimed by Silberman.

A. The claim defines means, and those means are the elements illustrated in the specifications of the Silberman patent and in the claims.

Mr. Leonard Lyon: I think the confusion here is that counsel has read only part of the claim, and his question is broad enough to include the whole claim, and the whole claim hasn't been read.

Mr. Mockabee: I am taking the claim as it is set forth here. I will go through the whole claim.

The Court: I was going to ask, and it may be answered by the rest of the claim, isn't it true in patent law that the patent is no broader than the claim, and, for instance, if a patent claim said only means of doing something, without describing it,

(Testimony of William A. Doble.)

the claim wouldn't be good even though you could tell what those means were by looking at the drawings or the specifications?

Mr. Leonard Lyon: There is a new provision in the 1952 Patent Act that is squarely on this subject, your Honor. It is a definition of a claim for means. [218]

The Court: You can cite it to me later. Was that the old rule that I stated, or was I wrong about that?

Mr. Leonard Lyon: You stated the rule in some of the older cases, that a claim for means was limited to the means shown in the specification. The statute now says that it shall be limited to the means shown in the specification and the equivalents.

Mr. Charles Lyon: May I read what the statute says? Section 112 of the new Patent Act. It is in three paragraphs, the last paragraph of which reads:

"An element in a claim for a combination may be expressed as a means or step for performing a specified function without the recital of structure, material, or acts in support thereof, and such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof."

The Court: It still excludes the drawing?

Mr. Charles Lyon: The specification in patent law is construed as being——

The Court: The drawing and the writing?

(Testimony of William A. Doble.)

Mr. Charles Lyon: The drawing and the written matter.

The Court: All right. Go ahead.

I demonstrate by my questions how little I know about patent law, so you will have to bear with me.

The Witness: My answer was based on the further portion of the claim which you did not read.

Q. (By Mr. Mockabee): I will read it through, then, and then we will go back and refer to different parts of it.

“to form slide fastener elements from the fed member and to attach the elements from the fed tape directly from the fed member, the feeding means”——

A. I might call your attention to an error in the claim. The claim does call for feeding means, but what he really means is the forming means, which he defined in the element to which this is a portion. Because it is clear that the feeding means doesn't include a shaft or a base.

Q. That is true.

A. It should be the forming means, so that should be corrected in the claim.

Pardon my interruption, but I thought it would be better to have that clear at this time.

Q. Taking it for granted for the purpose of the present time that that means forming means including a base, which Poux must undoubtedly have, is that not true?

A. Yes, I think Poux has a base, all right.

Q. Does Poux have a shaft carried by the base?

(Testimony of William A. Doble.)

A. Well, it doesn't disclose one, but he has to have some mechanism for operating the ram and other instrumentalities, but he doesn't teach just how that is to be accomplished. [220]

Q. Formerly would a shaft, such as called for by Silberman, be used in an apparatus of this general type?

A. I think Silberman was the first one to use that particular form of a shaft. There have been shafts used for operating rams.

Q. In punch presses?

A. In punch presses.

Q. Long prior to Silberman or Poux, isn't that true? A. That is true.

Q. A ram, which is the head 14 of Poux, is that not true?

A. No, I can't even agree with you there. I will agree that Poux has——

Q. 15, a cylindrical member?

A. Well, that is called a plunger. But in the Silberman patent the word "ram" has a definite meaning. Now, the equivalent of that ram in Silberman is the head 14——

Mr. Leonard Lyon: You mean in Poux?

The Witness: The ram 15 of Silberman is found in the Poux patent in the head 14, but it is of a different construction, has a different mode of operation, and the results are entirely different.

So it is true that it might have what we will call a ram, but it is a different type of instrumentality, it operates differently, and it performs differently

(Testimony of William A. Doble.)

than what we might [221] refer to as an equivalent in the Poux patent.

Q. (By Mr. Mockabee): Are these differences that you refer to between the ram of the two patents recited in the claim?

A. Yes, I think they are if we will just continue.

Q. "Cooperating means carried wholly by the ram and the base and driven from the shaft for forming and cutting elements from the member and attaching the elements to the tape"?

A. Now, I don't find that in Poux. I don't find those means in Poux. There is nothing carried by the ram of Poux that has anything to do with either cutting or closing the legs of the element on the tape.

Q. Not on the ram, but the claim recites the ram and the base.

A. Yes, wholly on the ram and the base. But the ram and the base of the Silberman patent are different in structure, they are different in operation, and there is a different result obtained. As I have pointed out many times, during the down stroke of the ram in Silberman, all of the operations are performed, a completely different organization; whereas in Poux the ram is in its upper position when other phases of the operation take place. For example, after the ram has left the rod moving to its upper limit of movement, the rod must be advanced, the cutters must work, the closing jaws must work, and [222] the green tape must be fed.

(Testimony of William A. Doble.)

That takes place independently of any movement or any element carried by the ram. Whereas in Silberman the ram causes the manufacture of the element, it causes the element to be cut off, it carries the cutter. In the Poux patent the ram doesn't carry a cutter. And, as I say, it forms an element, that is in Silberman, it cuts it off, and it causes the operation of the closing jaws to close the element on the tape.

Now, that is entirely a different organization of elements, operation, and result. With this Silberman structure we get a very high speed commercial machine. With Poux you couldn't run it fast and have it at all operative. [223]

Q. You state among other things, that the work or strip is progressed in accordance with Poux while the head 14 is raised. Is that not also true of Silberman?

A. Yes, that is true of Silberman.

The rams have to be raised to release the punches from the strip.

Q. Does not the vertically moving head of Poux and the ram of Silberman carry the tool for forming half of the projection and recess shape?

A. Yes, that is true.

Q. Does not the ram or head of Poux and that of Silberman form the element completely with the exception of the severing mechanism?

A. May I have that question read?

(Question read.)

The Witness: Well, I don't like to quibble with

(Testimony of William A. Doble.)

you on this, but there is such a difference. For example, the head 14 of Poux carries a keyhole punch. That is not found in this Silberman patent.

The Court: That wasn't the question. Read the question again, Mr. Reporter.

(Question read as follows: "Q. Does not the ram or head of Poux and that of Silberman form the element completely with the exception of the severing mechanism?") [224]

The Witness: I will have to answer that this way. Yes, as far as Poux is concerned it does form the element. But in the Silberman patent the element is not only formed by the ram but is also cut off by the ram.

Q. (By Mr. Mockabee): I said with the exception of the cutter.

A. Well, you have the cutting means, operating means carried by the ram so you just can't forget it. It is there.

Q. All right. Is it not true you have Silberman as well as Poux who claim that the jaw closing members are not carried by the ram?

A. That is true. They are both slidably mounted on the base.

Q. So that in neither case are all of the elements necessary for forming and severing and attaching one slide fastener element to the tape carried by the ram?

A. No; they are carried by the ram and the base. They are not all carried by the ram.

Q. From your knowledge of the prior art is it

(Testimony of William A. Doble.)

old to have a cutter on the ram with regard to the Silberman patent date?

A. No, pardon me. I would say it is new in relation to Silberman because he is not only manufacturing his element, but he is cutting it off and applying it or at least he is applying it and cutting it off in a very limited area of space. [225]

It is true there are cutter-offers in the art but it is not true for example in Poux, that you have a vertical cutting element.

It couldn't work if you put a vertical cutting element on Poux and mounted it on the ram. It wouldn't work.

The Court: Well, just remember that remark and we will show you are wrong a little later.

I want you to remember what you just said.

The Witness: Yes, your Honor.

The Court: All right. Go ahead.

The Witness: And I can say why it wouldn't work.

The Court: We will take that up later.

Q. (By Mr. Mockabee): But we do have this in common, do we not, between Poux and Silberman, that is discounting the cutter, the tools for forming the elements are carried by the ram in each case, is that not true?

A. Yes, that is true.

Q. And you have just stated that cutters carried by the ram are old with regard to Silberman?

A. No, not with regard to Silberman. I will say that there are cutters mounted on rams which oper-

(Testimony of William A. Doble.)

ate to cut off material but that organization is entirely different from the structure you have in Silberman.

The Court: Are you at a good stopping point? I mean for me to interrupt?

Mr. Mockabee: Yes.

The Court: Now, Mr. Witness, what I have in mind is this. I have to make a few assumptions here. We will take the Poux patent, patent '017 and let us first assume that instead of putting this keyhole or this hole through there which is shown by 19 in Figure 5—do you follow me?

The Witness: Yes, sir.

The Court: That we put a much larger hole through there and make it generally round in character if you want to—it wouldn't make much difference, but a much bigger hole which as I have drawn on the bottom here would leave a little leg on either side if there was a later cutting action—a hole immediately forward of the raised—a hole punched in it immediately forward of 17 which is the—what do you call it?

The Witness: That is the guide—the die that forms the head.

The Court: The recess and projection?

The Witness: Recess and projection.

The Court: That is the recess and projection. And instead of the keyhole shape being punched as in 20 in Figure 2, a much bigger hole is punched.

The Witness: Yes, your Honor.

The Court: And supposing you eliminated the

(Testimony of William A. Doble.)

spreader entirely, took the spreader out of the device and take your die [227] 21 which cuts the notches——

The Witness: Yes, sir.

The Court: And instead of having them cut only part way, put a cutter clear across and set that cutter to operate at the forward edge of this big hole that you have punched through the rod——

The Witness: Yes.

The Court: Do you follow me?

The Witness: Yes.

The Court: Then adjust your machine so that the device 28, the clamping jaws, clamp the legs around the fibre 2 at a moment prior to, immediately prior to the descent of the head. Then when your head came down in one stroke it could cut off the first element that already had been formed by other dies that could punch a hole for the next element and by a further die punch or raise a projection on another hole——

The Witness: Yes, sir.

The Court: Couldn't that be done?

The Witness: Well, I think you would have some troubles there, your Honor. For example during that down stroke of the ram you have got to also operate your closing dies and the patent defines that the clamping dies are operated while the ram is not moving.

I believe you would have some reorganizing to do. I believe you would have to reorganize your whole ram to move those parts closer. [228]

(Testimony of William A. Doble.)

The Court: Those are mechanical problems.

The Witness: When you go to make a machine that runs at 2,000 revolutions per minute all of those are critical problems, your Honor. It looks easy now that we have seen what Silberman did but as I have said the art struggled for 13 years to get a successful machine to operate on this method.

Many attempts were made, as the evidence will show, to do just what you are talking about but nobody got there until Silberman came along and showed the way.

Now, we can look back and say, "Sure, it is easy."

The Court: All right.

Q. (By Mr. Mockabee): Mr. Doble, yesterday I believe you testified that vertical cutters in this art were known prior to Silberman or Poux, is that true?

A. That is true.

Q. Upon what were those cutters mounted?

A. Those cutters—I don't know what ones you are referring to so maybe if you could show me what you have in mind I could tell you.

Q. Well, take a cutter for cutting an element from the strip of stock.

A. Well, have you a patent you could show me?

The Court: Well, what you are getting at is, that they were mounted on some kind of a head, most of them? [229]

The Witness: Yes, most of them were mounted on a head. They would reciprocate and cut metal.

(Testimony of William A. Doble.)

Q. (By Mr. Mockabee): To sever the metal from the stock?

A. That is true. And in those cases the element was free—it wasn't applied to a tape. At that time when it was cut it was not applied to a tape so it is a different story that you have here in Silberman where you are cutting it and applying it at the same time.

It is an old element in the art. You can find screws and bolts in the art but to bring them into a particular combination which will do something new and different you get 2 and 2 makes 16 here where otherwise you don't have anything. You get a new result by bringing these elements together.

Now, that is not in the art. The first time it appears in the art is in the Silberman patent, unless you have art that I don't know anything about and if you have I would like to see it.

Q. You speak of different arrangements on the part of Silberman which are not disclosed by Poux.

Are these specifically different features set forth in claim 1 of the Silberman patent?

A. Yes. Well, they are set forth broadly in claim 1.

Q. Broadly enough to include the structure in Poux?

A. No, I don't believe so, because it doesn't comply with the definition of Poux. [230]

Q. In what manner does Silberman limit himself in claim 1 to distinguish it from the disclosures in Poux?

(Testimony of William A. Doble.)

A. In the matter of the entire definition — “Mean immediately at that position for performing all operations upon the fed member to form slide fastener elements from the fed member and to attach the elements to the fed tape directly from the fed member” and now he is going to specifically define what they include. “A base.” Of course Poux has a base. “The shaft carried by the base.”

Poux has some operating means.

“A ram, and co-operating means carried wholly by the ram and the base and driven from the shaft for forming the cutting elements from the member and attaching the elements to the tape.”

Now, in defining that last portion he is defining the relationship of those elements carried by the ram and the base and the co-operative relationship of those particular elements in forming, cutting or forming, applying and cutting the elements from the tape or from the strip and applying it to the tape.

Q. Does he recite a co-operative relationship between them or merely state that they are carried by the ram and the base?

A. Well, that defines the co-operative relationship when you turn to the specifications in the patent and the drawings. [231] That is the only means he has of operating the cutting member, the ram, and the co-operation between the ram and the cutting member and the ram and the closing member.

The only co-operation you have is between the ram and those members, either on the ram or base.

(Testimony of William A. Doble.)

The Court: You are getting a lot of words in here. Actually in both Poux and Silberman, '793, there is co-operating means between the ram and the base which will bring about the result, is there not?

The Witness: No, sir. They bring about a portion of the results. That co-operation forms the projections, forms the keyhole slot. It slices the little slices out of the side of the bar and it spreads the jaws but there is no co-operative relationship between the ram and the cutter and the ram and the closing dies or closing the elements on the tape.

The Court: The fact that the ram is out of position at a moment when the cutting goes on isn't that co-operation?

The Witness: No, I don't think it is in the sense that the patentee means, your Honor, because there is a very definite definition of what he means by "co-operation."

Q. (By Mr. Mockabee): Now, the patentee describes in detail the structure shown in Silberman?

A. Yes, sir.

Q. But is it not a fact that these structural differences are not set forth in claim 1 with the exception of the [232] fact that in Poux the cutter is carried by the base whereas in Silberman it is carried by the ram?

A. And the distinction that the closing jaws are not related to the operation, the direct movement of the ram.

Q. In which patent?

(Testimony of William A. Doble.)

it doesn't say how much is on the base and how much is on the ram.

The Witness: That is correct.

The Court: And "driven from a shaft for forming and cutting elements from the tape."

The Witness: From the member, your Honor.

The Court: From the member and "attaching the element to the tape."

That language as it stands seems to me to be broad enough to cover either Poux or Silberman.

Mr. Leonard S. Lyon: Well, I think the language is a little ambiguous at that point, but if you wanted to go on from there, if you look at claim 2 I think you will find the ambiguity completely cured in line 16 which says:

"Co-operating means carried by the ram and the base [235] and actuated entirely by the ram for forming and cutting elements from the members."

There it says "actuated entirely by the ram for cutting," and if there was an ambiguity in one claim I think it is cured in the second claim, your Honor.

The Court: All right. There is a big difference in my opinion between claims 1 and 2 in that respect.

Tell me just as a matter of information. You have got claim 1 here that is as broad as a barn and you have got claim 40 which, for example, is much more specific.

These broad claims are frowned upon ordinarily by the courts, claims that are as broad as claim 1.